

2012 Edition

Dissolution of Marriages in Connecticut

A Guide to Resources in the Law Library

- “A marriage is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of marriage by a court of competent jurisdiction.” [CONN. GEN. STAT. § 46b-40\(a\) \(2011\)](#).
- “We recognize that an annulment and a dissolution of marriage differ fundamentally. An annulment renders the marriage void ab initio [from the beginning] while a dissolution is based upon a valid marriage which terminates as of the date of the judgment of dissolution.” [Durham v. Miceli](#), 15 Conn. App. 96, 543 A.2d 286 (1988).
- **Merger of civil union into marriage by action of the parties.** “(a) On and after April 23, 2009, and prior to October 1, 2010, two persons who are parties to a civil union entered into pursuant to sections 46b-38aa to 46b-38oo, inclusive, may apply for and be issued a marriage license, provided such persons are otherwise eligible to marry under chapter 815e and the parties to the marriage will be the same as the parties to the civil union.

(b) After the celebration of such marriage and upon the recording of the license certificate or notarized affidavit with the registrar of vital statistics of the town where the marriage took place pursuant to section 46b-34, the civil union of such persons shall be merged into the marriage by operation of law as of the date of the marriage stated in the certificate or affidavit.” [CONN. GEN. STAT. § 46b-38qq \(2011\)](#).
- “‘Marriage’ means the legal union of two persons.” [CONN. GEN. STAT. § 46B-20 \(4\) \(2011\)](#).

If you are looking for the [Do It Yourself Divorce Guide](#), [family forms](#), or other family publications, please see the family matters frequently asked questions web page at <http://www.jud.ct.gov/faq/family.htm>.

Table of Contents

Section 1: Grounds for Dissolution of Marriage or Legal Separation	3
Section 1.1: No Fault Grounds	4
Section 1.2: Fault Grounds	9
Table 1: Fault and Financial Awards	12
Section 1.2a: Adultery	14
Section 1.2b: Fraudulent Contract	17
Section 1.2c: Willful Desertion	20
Table 2: Constructive Desertion	23
Section 1.2d: Seven Years' Absence	24
Section 1.2e: Habitual Intemperance	26
Section 1.2f: Intolerable Cruelty	29
Section 1.2g: Imprisonment / Infamous Crime	32
Section 1.2h: Confinement / Mental Illness	34
Section 1.3: Multiple Grounds	36
Section 1.4: Defenses	38
Section 2: Procedures	40
Section 2.1: Jurisdiction	44
Table 3: Domicile	48
Section 2.2: Process	49
Section 2.3: Parties	54
Section 3: Pleadings	58
Section 3.1: Complaint	59
Section 3.2: Motion to Dismiss	62
Table 4: <i>Badouder v. Abdennur</i>	66
Section 3.3: Motion to Strike	67
Section 3.4: Answer/Cross Complaint	69
Section 3.5: Amendment to Complaint	72
Table 5: Default in family Matters	76

These guides are provided with the understanding that they represent only a beginning to research. It is the responsibility of the person doing the legal research to come to his or her own conclusions about the authoritativeness, reliability, validity, and currency of any resource cited in this research guide.

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<http://www.jud.ct.gov/lawlib/selfguides.htm#Pathfinders>

This guide links to advance release slip opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar.
The online versions are for informational purposes only.

Section 1: Grounds for Dissolution of Marriage or Legal Separation

A Guide to Resources in the Law Library

- “A decree of dissolution of a marriage or a decree of legal separation shall be granted upon a finding that one of the following causes has occurred:
 - (1) The marriage has broken down irretrievably;
 - (2) the parties have lived apart by reason of incompatibility for a continuous period of at least the eighteen months immediately prior to the service of the complaint and that there is no reasonable prospect that they will be reconciled;
 - (3) adultery;
 - (4) fraudulent contract;
 - (5) willful desertion for one year with total neglect of duty;
 - (6) seven years’ absence, during all of which period the absent party has not been heard from;
 - (7) habitual intemperance;
 - (8) intolerable cruelty;
 - (9) sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year;
 - (10) legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint.” [CONN. GEN. STAT. § 46b-40\(c\) \(2011\)](#).

- **Merger of civil union into marriage by action of the parties.** “(a) On and after April 23, 2009, and prior to October 1, 2010, two persons who are parties to a civil union entered into pursuant to sections 46b-38aa to 46b-38oo, inclusive, may apply for and be issued a marriage license, provided such persons are otherwise eligible to marry under chapter 815e and the parties to the marriage will be the same as the parties to the civil union.
 - (b) After the celebration of such marriage and upon the recording of the license certificate or notarized affidavit with the registrar of vital statistics of the town where the marriage took place pursuant to section 46b-34, the civil union of such persons shall be merged into the marriage by operation of law as of the date of the marriage stated in the certificate or affidavit.” [CONN. GEN. STAT. § 46b-38qq \(2011\)](#).

- “‘Marriage’ means the legal union of two persons.” [CONN. GEN. STAT. § 46B-20\(4\) \(2011\)](#).

Section 1.1: No Fault Grounds

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to a no fault dissolution of marriage (divorce) commenced after October 1, 1997

DEFINITIONS:

- **No fault divorce:** "A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred: (1) the marriage has broken down irretrievably; (2) the parties have lived apart by reason of incompatibility for a continuous period of at least the eighteen months immediately prior to the service of the complaint and that there is no reasonable prospect that they will be reconciled" [CONN. GEN. STAT. § 46b-40\(c\)\(2011\)](#).
- "Incompatibility of personalities is not and has never been a ground for divorce in Connecticut. Under our law, married persons are expected to accept the ordinary vicissitudes of marriage caused by unwise mating, unhappy situations, unruly tempers and common quarrels or marital wranglings." [Nowak v. Nowak](#), 23 Conn. Sup. 495, 497, 185 A.2d 83 (1962).
- **Irretrievable breakdown:** "In 1973, by No. 73-373 of the 1973 Public Acts (P.A. 73-373), the legislature effected an historic revision of our marital dissolution statutes. That legislation introduced certain new concepts to our family law, such as the irretrievable breakdown of the marriage as a ground for dissolution." [Doe v. Doe](#), 244 Conn. 403, 433, 710 A.2d 1297 (1998).
- "The determination of whether a breakdown of a marriage is irretrievable is a question of fact to be determined by the trial court." [Eversman v. Eversman](#), 4 Conn. App. 611, 614, 496 A.2d 210 (1985).
- "The absence of objective guidelines does not mean an abdication of judicial function, nor does it signal, as the defendant argues, that a court determining whether a marriage has in fact irretrievably broken down is acting purely ministerially or is granting a divorce 'upon demand.' It does, however, sustain the trial court's conclusion that the defendant's decision to rearrange his business ventures after the initiation of divorce proceedings does not necessarily repair the rupture in the marital relationship that had previously occurred." [Joy v. Joy](#), 178 Conn. 254, 255-256, 423 A.2d 895 (1979).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

COURT RULES:

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- CONN. GEN. STAT. (2011).
 - [§ 46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation
 - [§ 46b-51](#). Stipulation of parties and finding of irretrievable breakdown
- CONN. PRACTICE BOOK (2012).
 - Chapter 25. **Procedure in Family Matters**
 - [§ 25-2](#). Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment
 - [§ 25-7](#). Pleadings in general; Amendments to complaint or application
 - [§ 25-8](#). —Amendment; New grounds for Dissolution of Marriage or Civil Union
 - [§ 25-9](#). —Answer, Cross Complaint, Claims for Relief by Defendant
 - [§ 25-10](#). —Answer to Cross Complaint
- [Embriano v. Embriano](#), No. FA-06 4023849 (Ct. Supp. Judicial District of Hartford at Hartford , Mar. 24, 2008). “By complaint dated June 5, 2006, the plaintiff-husband commenced this action seeking a dissolution of marriage on the grounds of irretrievable breakdown and other relief . . . The court has considered all of the factors set out in Connecticut General Statutes Sections 46b-81, 46b-82, 46b-62 and other pertinent statutes, earnings and earning capacity differentials, causes for the breakdown of the marriage and the consequences of the financial orders set forth below.”
- [Grimm v. Grimm](#), 82 Conn. App. 41, 48, 844 A.2d 855 (2004). “The defendant failed to demonstrate that the court improperly found that the marriage had broken down irretrievably. The record clearly demonstrates the breakdown in the parties’ marriage. The fact that the defendant claims to maintain hope for reconciliation will not support a finding that there are prospects for reconciliation. The allegations raised by the plaintiff concerning the difficulties in the marriage were serious and spanned almost the entire length of the marriage. The court was within its discretion to credit the plaintiff’s version of the facts that the pattern of litigation was the result of the defendant’s attempt to thwart the dissolution proceedings, not the plaintiff’s lack of intent to end the marriage. Accordingly, we conclude that the court did not improperly find that the marriage had broken down irretrievably.”
- [Evans v. Taylor](#), 67 Conn. App. 108, 115, 786 A.2d 525

(2001). "On the basis of the record, we conclude that the court could reasonably have found that the defendant had failed to establish her claim of intolerable cruelty, and therefore it was not clearly erroneous for the court to reject intolerable cruelty as a ground for dissolution and instead grant the dissolution of the marriage on the ground of irretrievable breakdown."

- [Sweet v. Sweet](#), 190 Conn. 657, 659, 462 A.2d 1031 (1983). "Section 46b-51 allows the court to avoid specifying fault for the breakdown of the marriage and allows the parties to avoid calling friends or relatives to testify as to the reasons for the breakdown."
- [Eversman v. Eversman](#), 4 Conn. App. 611, 614, 496 A.2d 210 (1985). "The determination of whether a breakdown of a marriage is irretrievable is a question of fact to be determined by the trial court The fact that the defendant maintains hope for reconciliation will not support a finding that there are prospects for a reconciliation A difference, to be irreconcilable, need not necessarily be so viewed by both parties."
- [Sweet v. Sweet](#), 190 Conn. 657, 659-670, 462 A.2d 1031 (1983). "Section 46b-51 allows the court to avoid specifying fault for the breakdown of the marriage. . . . In contrast with 46b-51, under the statutes governing the assignment of the property of the parties or the award of alimony in a contested proceeding, the court is required to consider the causes for the dissolution of the marriage."
- [Posada v. Posada](#), 179 Conn. 568, 572, 427 A.2d 406 (1980). "No-fault divorce does not mean that the causes of a marital breakup are always irrelevant, but it does mean that determining cause is not crucial to the judicial administration of matrimonial matters."
- [Gluck v. Gluck](#), 181 Conn. 225, 227, 435 A.2d 35 (1980). "Next, the defendant asserts that General Statutes 46b-40(c), to the extent that it authorizes the dissolution of a marriage if the marriage has broken down irretrievably, is vague, nullifies the other grounds for dissolution, prevents defenses and impairs the obligation of contracts, all in violation of constitutional strictures. The vagueness issue was resolved in [Joy v. Joy](#), 178 Conn. 254, 255-56, 423 A.2d 895 (1979); what was said there need not be repeated here. The gravamen of the unparticularized claim that irretrievable breakdown nullifies the other grounds for dissolution set forth in 46b-40(c) and prevents defenses appears to be that the legislature has sanctioned divorce on demand. This claim too was rejected in [Joy v. Joy](#), supra. The notion that allowing marital dissolutions based on irretrievable breakdown impairs the obligation of contracts within the meaning of article one, 10 of the United States constitution is bankrupt. Marriage is not a

contract within the meaning of this clause of the constitution. [Maynard v. Hill](#), 125 U.S. 190, 210, 8 S.Ct. 723, 31 L.Ed. 654 (1888)."

- [Joy v. Joy](#), 178 Conn. 254, 256, 423 A.2d 895 (1979). "The defendant claims that 46-32(c) is unconstitutional unless this court imposes judicial standards or guidelines to limit discretionary fact-finding by the trial courts of this state. We disagree. At least since [Maynard v. Hill](#), 125 U.S. 190, 210-14, 8 S.Ct. 723, 31 L.Ed. 654 (1888), it has been clear that the legislature has plenary power to determine the circumstances under which a marital relationship is created and terminated The legislature could rationally conclude that public policy requires an accommodation to the unfortunate reality that a marital relationship may terminate in fact without regard to the fault of either marital partner, and that such a relationship should therefore be dissoluble in law upon a judicial determination of irretrievable breakdown. Courts in other jurisdictions with similar statutes have unanimously upheld the constitutionality of no-fault divorce."
- [McEvoy v. McEvoy](#), 99 Conn. 427, 421, 122 A. 100 (1923). "But there are trials causing much weariness and suffering, which parties to the marriage contract must bear; the policy of the State, as well as the sacred nature of the marriage covenant, requires patient endurance."

WEST KEY NUMBERS:

- *Divorce* #12. Causes for divorce in general
- *Divorce* #34. Inability to live together
- *Divorce* #36. Voluntary separation

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#): *Irretrievable breakdown*
- [DOWLING'S DIGEST](#): *Dissolution of marriage* § 7
- [WEST'S CONNECTICUT DIGEST](#): *Divorce #12 Causes for divorce in general*

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§§ 22-24. No-Fault grounds
§§ 25-33. Voluntary separation
- 27A [C.J.S.](#) *Divorce* (2005).
§§ 27-39. Grounds; No-Fault divorce
- *Dissolution Of Marriage On Statutory Ground Of Incompatibility*, 19 [POF2d](#) 221(1979).

ALR INDEX:

- Divorce and Separation
 - Incompatibility
- No-Fault Divorce

TEXTS &

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT](#)

TREATISES:

[PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 15. Dissolution of marriage in general
§ 15.2 Breakdown of marriage relationship
§ 15.3 Constitutionality of no-fault law
§ 15.4 Other grounds for dissolution
§ 15.5 Separation for eighteen months

LAW REVIEWS:

- Robert M. McAnernery and Samuel V. Schoommaker III, *Connecticut's New Approach To Marriage Dissolution*, 47 [CONNECTICUT BAR JOURNAL](#) 375 (1973).

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Originally compiled by Lawrence Cheeseman, retired Judicial Branch Supervising Law Librarian.

Section 1.2: Fault Grounds

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to dissolution of marriage (divorce) based upon fault grounds.

DEFINITIONS:

- **Fault grounds:** "A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred. . . (3) adultery; (4) fraudulent contract; (5) wilful desertion for one year with total neglect of duty; (6) seven years' absence, during all of which period the absent party has not been heard from; (7) habitual intemperance; (8) intolerable cruelty; (9) sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year; (10) legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint." CONN. [GEN. STAT. §46b-40\(c\) \(2011\)](#).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
[§46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
[§ 25-2](#). Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment
[§ 25-7](#). Pleadings in general; Amendments to complaint or application
[§ 25-8](#). —Amendment; New Grounds for Dissolution of Marriage or Civil Union
[§ 25-9](#). —Answer, Cross Complaint, Claims for Relief by Defendant
[§ 25-10](#). —Answer to Cross Complaint

CASES:

- [Turgeon v. Turgeon](#), 190 Conn. 269, 278, 460 A.2d 1260 (1983). "Although, because of their clandestine nature, adulterous acts are usually proved by circumstantial evidence . . . the circumstances must be such as to lead the guarded discretion of a reasonable and just person to the conclusion of guilt."

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Posada v. Posada](#), 179 Conn. 568, 573, 427 A.2d 406 (1980). "In the text of the statutes, the criteria relating to the 'the causes for the . . . dissolution of marriage' is only one item in an extensive list of criteria that the trial court is directed to take into account."
- [Kinsley v. Kinsley](#), 110 Conn. 695, 695-696 (1929). "The cumulative effect of the defendant's acts and conduct as recited in the report of the committee may well have been held to have been so cruel as to have destroyed the public and personal objects of matrimony, past rehabilitation, and rendered a continuance of the marriage relation unbearable - beyond reasonable endurance - and therefore intolerable within the meaning we have given it in the ground for divorce, 'intolerable cruelty.'"
- [Alden v. Alden](#), 21 Conn. Sup. 301, 304, 154 A.2d 522 (1959). "The desertion for three years which constitutes a ground for divorce under our statute involves the coexistence of the following four conditions: (1) cessation from cohabitation, (2) an intention on the part of the absenting party not to resume it, (3) the absence of the other party's consent, and (4) the absence of justification."
- [Vendetto v. Vendetto](#), 115 Conn. 303, 305, 161 A. 392 (1932). "The plaintiff's ground of divorce was the fraud of the defendant in entering into the marriage contract knowing her epileptic condition, and yet, in order to induce marriage, concealing the fact from the plaintiff."

WEST KEY NUMBERS:

- *Divorce* # 12-38. Grounds

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#): *Fault*
- [DOWLING'S DIGEST](#): *Dissolution of Marriage* §§ 6-10
- [WEST'S CONNECTICUT DIGEST](#): *Divorce II. Grounds*

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008). §§ 34-106. Fault grounds
- 27A [C.J.S.](#) *Divorce* (2005).
 §§ 40-65. Cruelty
 §§ 66-79. Desertion
 §§ 80-87. Personal indignities
 §§ 88-100. Other particular grounds

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
 Chapter 15. Dissolution of marriage in general
 § 15.6 Adultery
 § 15.7. Fraudulent contract
 § 15.8. Willful desertion for one year
 § 15.9. Continuous absence for seven years
 § 15.10. Habitual intemperance

- § 15.11. Intolerable cruelty
- § 15.12. Imprisonment; life sentence or commission of
infamous
crime
- § 15.13. Five-year confinement for mental illness
- § 15.14. Defenses

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Table 1: Fault and Financial Awards

Fault and Financial Awards	
Assignment of property	<p>"As stated in Christoni v. Christoni, 156 Conn. 628, 629, 239 A.2d 533, on the issue of choosing alternative grounds for granting a divorce: 'Where more than one ground for a divorce is claimed and one alleged ground is proved, it is immaterial whether or not the additional statutory ground or grounds may also exist.' The fault of the parties in causing a marital dissolution is material, however, to the issue of an assignment of property ancillary to the marital dissolution." Hollingsworth v. Hollingsworth, 180 Conn. 212, 214 fn. 2, 429 A.2d 463 (1980).</p>
Irretrievable breakdown	<p>"The contention . . . that a determination of irretrievable breakdown precludes the court from considering the causes of the dissolution in making financial awards is erroneous." Sweet v. Sweet, 190 Conn. 657, 660, 462 A.2d 1031(1983).</p>
Factors	<p>"The court finds that the presence of condoms in his [toiletries bag] was a sufficient basis for the plaintiff to presume he was unfaithful to her. Further, the court having found him not credible on this regarding a substantial statutory factor, cause of the breakdown of the marriage, which the court must consider in weighing alimony claims."</p> <p>Brody v. Brody, 136 Conn. App. 773, 780 (2012).</p> <p>"In the text of the statutes, the criteria relating to the 'the causes for the . . . dissolution of marriage' is only one item in an extensive list of criteria that the trial court is directed to take into account." Posada v. Posada, 179 Conn. 568, 573, 427 A.2d 406 (1980).</p>
Contribution	<p>"We disagree with the plaintiff's claim that the trial court, in making its award of alimony and its assignment of property, gave inordinate weight to the cause of the breakdown. There is no provision in the governing statutes requiring that awards of alimony be distributed equally between the parties The trial court structured the division of property in a way which returned to the defendant his contribution to the marriage." Carter v. Carter, 8 Conn. App., 356, 359, 512 A.2d 979 (1986).</p>
Misconduct	<p>"While alimony, in whatever form, or an assignment of property is not to be considered either as a reward for virtue or as a punishment for wrongdoing, a spouse whose conduct has contributed substantially to the breakdown of the marriage should not expect to receive financial kudos for his or her misconduct. Moreover, in considering the gravity of such misconduct it is entirely proper for the court to assess the impact of the errant spouse's conduct on the other spouse. Because in making its assignment of</p>

	property the trial court had a reasonable basis for its disposition we see no reason for disturbing the result." Robinson v. Robinson , 187 Conn. 70, 72, 444 A.2d 234 (1982).
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Section 1.2a: Adultery

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to dissolution of marriage (divorce) based upon the grounds of adultery.

DEFINITIONS:

- **Adultery** “means voluntary sexual intercourse between a married person and a person other than such person’s spouse.” [CONN. GEN. STAT. § 46b-40\(f\) \(2011\)](#).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011) [§ 46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation.
“A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (3) adultery”

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
 - [§ 25-2](#). Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment
 - [§ 25-7](#). Pleadings in General; Amendments to Complaint or Application
 - [§ 25-8](#). —Amendment; New Grounds for Dissolution of Marriage or Civil Union
 - [§ 25-9](#). —Answer, Cross Complaint, Claims for Relief by Defendant
 - [§ 25-10](#). —Answer to Cross Complaint

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Brodsky v. Brodsky](#), 153 Conn. 299, 300-301, 216 A.2d 180 (1966). “Adultery, as a ground for divorce or legal separation under General Statutes 46-13 or 46-29, requires proof that the other spouse has engaged in extramarital sexual relations. 27A C.J.S., Divorce, 21; 17 Am.Jur., Divorce and Separation, 34; see *Schilcher v. Schilcher*, 124 Conn. 445, 200 A. 351; *Torlonia v. Torlonia*, 108 Conn. 292, 302, 142 A. 843; *Dennis v. Dennis*, 68 Conn. 186, 195, 36 A. 34; *Trubee v. Trubee*, 41 Conn. 36, 40. A principal claim of error in the present case is that the plaintiff failed to prove that the defendant committed adultery with Barbara Jean Miles. Although the proof will be circumstantial in nearly every case, the plaintiff must nonetheless prove the adulterous relationship by a fair preponderance of the evidence. *Zeiner v. Zeiner*, 120 Conn. 161, 165, 179 A. 644. The circumstances must be such as to lead the guarded discretion of a reasonable and just man to the conclusion of guilt. *Neff v. Neff*, 96 Conn. 273, 275, 114 A. 126.”
- [Brody v. Brody](#), 136 Conn. App. 773, 783 (2012). “The Dissolution of Marriages in Connecticut-14

court's judgment was not made on the basis of a finding of infidelity. Rather, the court explicitly found that the marriage had broken down irretrievably, and this was the statutory ground for dissolution listed on the judgment file. ...To the extent that the court referenced the incident during which the plaintiff found unused condoms in the defendant's toiletries bag, it is clear that the court merely was reviewing another cause of the breakdown of the marriage, in this instance, the plaintiff's belief that the defendant was unfaithful to her. This reading of the court's decision is supported further by the court's later reference to 'the defendant's dishonesty, probable infidelity and his increasingly abusive behavior toward the plaintiff' as factors that contributed to the breakdown of the marriage. The only other point at which the court mentioned infidelity—in the course of reviewing the defendant's repeated noncompliance with the plaintiff's discovery requests for various financial records—does not lend any support to the defendant's arguments to the contrary. On the basis of the entire record, there is no support for the defendant's contention the court made a finding of infidelity."

- [Charpentier v. Charpentier](#), 206 Conn. 150, 154, 536 A.2d 948 (1988). "The fact that a custodial parent normally bears the principal responsibility for raising and educating children, whose needs demand primary consideration, may well justify a division of family assets that would otherwise appear disproportionate and unfair. There is no basis whatever, therefore, for the claim raised by the defendant of discrimination because of sexual preference."
- [Turgeon v. Turgeon](#), 190 Conn. 269, 278, 460 A.2d 1260 (1983). "Although, because of their clandestine nature, adulterous acts are usually proved by circumstantial evidence . . . the circumstances must be such as to lead the guarded discretion of a reasonable and just person to the conclusion of guilt The adulterous relationship must be established by a fair preponderance of the evidence."
- [Neff v. Neff](#), 96 Conn. 273, 276, 114 A. 126 (1921). "in weighing the evidence of adultery, the court should exercise great care to see that it is not imposed upon through the intense interest of the parties to color the facts; it should not see evil where the circumstances may reasonably lend themselves to an innocent interpretation, nor on the other hand, should it refuse to reach that conclusion which the sound and unprejudiced judgment should lead to."
- [Beede v. Beede](#), 186 Conn. 191, 196, 440 A.2d 283 (1982). "There is nothing in the record to support the defendant's claim that the court acted punitively in making its award by focusing on the defendant's adultery as the cause of the dissolution."

WEST KEY NUMBERS:

Divorce #26. Adultery

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#): *Adultery*
- [DOWLING'S DIGEST](#): *Dissolution of Marriage* § 10
- [WEST'S CONNECTICUT DIGEST](#) : *Divorce, II. Grounds, 26. Adultery*

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§ 56. Adultery, generally
§ 57. Requirement of intent
- 27A [C.J.S.](#) *Divorce* (2005).
§ 88. Adultery
- *Adultery*, 49 [POF3d](#) 277 (1998).

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 15 Dissolution of marriage in general
§ 15.6. Adultery

LAW REVIEWS:

- Victor M. Gordon, *Adultery As A Ground For Divorce In Connecticut*, 23 [CONNECTICUT BAR JOURNAL](#) 315 (1949).

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Section 1.2b: Fraudulent Contract

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon the grounds of fraudulent contract.

DEFINITIONS:

- **Fraudulent contract:** "There must be a deception in respect to some fact whose existence or nonexistence may affect in some certain way the very essence of the marriage relation, resulting in a lawful marriage which practically operates as a fraud upon the deceived spouse; and the existence or nonexistence of the fact thus concealed or misrepresented must operate, as between parties to the marriage, to prevent some essential purpose of marriage and work a practical destruction of that relation." Gould v. Gould, 78 Conn. 242, 261 (1905).
- "In Connecticut, by statute . . . fraudulent contract is a ground for divorce. This ground probably embraces some situations which, at least in jurisdictions not having such a ground of divorce, could also support an action for annulment." Perlstein v. Perlstein, 152 Conn. 152, 161, 204 A.2d 909 (1964).
- "All the grounds of divorce specified, except fraudulent contract, are of such a nature that they can come into existence only after the marriage. While fraudulent conduct of a certain kind will render a marriage voidable, such fraud differs from that which vitiates ordinary contracts in that the party defrauded may not at his own election avoid the marriage, but it is held to be voidable only by a decree of the court." Davis v. Davis, 119 Conn. 194, 196, 175 A. 574 (1934).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
[§ 46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation.
"A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (4) fraudulent contract"

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
[§ 25-2](#). Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment
[§ 25-7](#). Pleadings in general; Amendments to Complaint or Application
[§ 25-8](#). —Amendment; New Grounds for Dissolution of Marriage or Civil Union
[§ 25-9](#). —Answer, Cross Complaint, Claims for Relief

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Dasilva v. Dasilva, No. 02 0470290 (Ct. Super. Ct., J.D. New Haven, Apr. 21, 2003) 2003 WL 21037549 (Conn. Super. 2003). "What amounts to 'fraudulent contract,' as that term is used in our divorce statute, and to that or other equivalent language, as used in the law, written or unwritten, elsewhere, to express a recognized condition justifying the annulment or dissolution of a marriage, has been much discussed, but no satisfactory and comprehensive definition applicable to all situations has been arrived at or attempted to be arrived at. *Gould v. Gould*, 78 Conn. 242 (1905).
It is certain, however, that wherever there is a fraud on the part of one of the parties amounting to 'a fraud in the essentialia of the marriage relation,' or as in *Gould v. Gould*, supra, page 261-62, "whenever there is a 'deception in respect to some fact whose existence or nonexistence may affect in some certain way the very essence of the marriage relation, resulting in a lawful marriage which practically operates as a fraud upon the deceived spouse, and the existence or nonexistence of the fact thus concealed or misrepresented must operate, as between the parties to the marriage, to prevent some essential purpose of marriage and work a practical destruction of that relation."
- Tuccio v. Tuccio, 18 Conn. Sup. 215 (1953). ". . . if the marriage was induced by fraudulent contract or representation of the epileptic as to his condition, it may be grounds for divorce on the statutory ground of fraudulent contract."
- Gould v. Gould, 78 Conn. 242, 250, 61 Atl. 604 (1930). "Such a fraud is accomplished whenever a person enters into that contract knowing that he is incapable of sexual intercourse, and yet, in order to induce marriage, designedly and deceitfully concealing that fact from the other party, who is ignorant of it and has no reason to suppose it to exist."
- McCurry v. McCurry, 126 Conn. 175, 177-178, 10 A.2d 365 (1939). "The referee refused specifically to find that the defendant entered into the marriage with the concealed intent not to consummate it or to have children and found that the plaintiff had failed to prove that allegation of the complaint. The existence of such an intent would be a question of fact; and we cannot hold that no other conclusion was reasonably possible than that she had that intent when she was married."
- Gordon v. Gordon, 11 Conn. Sup. 302, 302 (1942). "In order to make out fraudulent contract as a ground for divorce the facts misrepresented or concealed must be such as to go to the very essence of the marriage."

- Horowitz v. Horowitz, 6 Conn. Sup. 14, 16 (1938). "The false representation of a woman that she is pregnant by the man who is thereby induced to marry her is not the representation of a fact which if it does not exist prevents some essential purpose of marriage and works a practical destruction of the relationship."
- Wetstine v. Wetstine, 114 Conn. 7, 12, 157 A. 418 (1931). "Misrepresentation by the defendant as to her age, her name, and her nationality would not furnish a sufficient basis to dissolve a consummated marriage on that ground"
- Lyman v. Lyman, 90 Conn. 399, 403, 97 A. 312 (1916). "In consonance with this principle, the courts are practically agreed in holding that antenuptial pregnancy by another man, if concealed by the wife from the husband, who was himself innocent of improper relations with her, is a fraud upon him justifying a divorce or annulment of the marriage, as the appropriate remedy in the jurisdiction may be."

WEST KEY NUMBERS:

- *Divorce* #18. Grounds existing at time of marriage. Fraud or duress in procuring marriage

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#): *Fault*
- [DOWLING'S CONNECTICUT DIGEST](#): *Dissolution of marriage* § 7
- [WEST'S CONNECTICUT DIGEST](#): *Divorce, II. Grounds, 18. Fraud or duress in procuring marriage*

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
 Fraud
 § 98. Generally
 § 99. Premarital unchastity
 § 100. Pregnancy at time of marriage
 § 101. —Effect of husband's guilt or knowledge
- 27A [C.J.S.](#) *Divorce* (2005).
 § 90-91. Fraud ; duress
- Annotation, *What Constitutes Impotency As Ground For Divorce*, 65 [ALR2d](#) 774 (1959).

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
 Chapter 15 Dissolution of marriage in general
 § 15.7. Fraudulent contract

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Originally compiled by Lawrence Cheeseman, retired Judicial Branch Supervising Law Librarian.

Section 1.2c: Willful Desertion

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon the grounds of willful desertion for one year with total neglect of duty.

DEFINITIONS:

- **Willful desertion:** "the willful absention of one party to the marriage contract from the society of the other, coupled with the intention on the part of the absention party to live apart, in spite of the wish of the other, and not to return to cohabitation." [Casale v. Casale](#), 138 Conn. 490, 492, 86 A.2d 568 (1952).
- "The elements of a cause of action on the grounds of desertion are (1) cessation from cohabitation; (2) an intention on the part of the absention party not to resume it; (3) the absence of the other party's consent; and (4) absence of justification." [Gannon v. Gannon](#), 130 Conn. 449, 450, 35 A.2d 204 (1943).
- "When our legislature, in 1843, adopted as grounds of divorce *a vinculo*, 'habitual intemperance' and 'intolerable cruelty,' it used these words with their ordinary meaning, but with special reference to what had been since 1639 our settled policy in respect to divorce; i.e., marriage is a life status and should never be dissolved, unless one of the parties is guilty of conduct which in itself is a practical annulling and repudiation of the marriage covenant. **Willful desertion for such a length of time as the statute says shall conclusively prove a permanent abandonment and repudiation of all marital rights and duties, had been a ground for divorce.** Following this analogy the legislature, in 1843, made grounds of divorce: intemperance so long continued that the fixed habit renders the party incapable of performing the duties of the marriage relation; and cruelty of such a nature as to be intolerable, and to render a continuance of the relation by the suffering victim impracticable." [Morehouse v. Morehouse](#), 70 Conn. 420, 426-427, 39 A. 516 (1898). [emphasis added]

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
[§ 46b-40. Grounds for dissolution of marriage; legal separation; annulment](#)
 - (c). Fault and no fault grounds for divorce or legal separation. "A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (5) willful desertion for one year with total neglect of duty"
 - (e). "In an action for dissolution of a marriage or a legal separation on the ground of willful desertion for one year, with total neglect of duty, the furnishing of financial support shall not disprove total neglect of duty, in the absence of other evidence."

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
 - [§ 25-7.](#) Pleadings in general; Amendments to Complaint or Application
 - [§ 25-8.](#) —Amendment; New Grounds for Dissolution of Marriage or Civil Union
 - [§ 25-9.](#) —Answer, Cross Complaint, Claims for Relief by Defendant
 - [§ 25-10.](#) —Answer to Cross Complaint

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Toth v. Toth , 23 Conn. Sup. 161, 178 A.2d 542 (1962). "there is no question of the validity of the ground of constructive desertion where the facts of the same fit in with the definition of wilful desertion . . . found in Connecticut cases in construing our statutes."
- Schick v. Schick, 17 Conn. Sup. 232, 233 (1951). "Desertion requires not only separation for the requisite period of three years but also an intent, persisting throughout that entire period, not to resume the marriage relationship. Separation alone is not the equivalent of desertion."
- Baccash v. Baccash, 11 Conn. Sup. 387, 389 (1942). "In order to justify a husband in leaving his wife there must be such improper conduct on her part as would defeat the essential purpose of the marriage relation or the circumstances must be such that he has good reason to believe that cohabitation cannot longer be continued with due regard to this health, or safety, or that the conditions of his marital life have become intolerable."
- McCurry v. McCurry , 126 Conn. 175, 178, 10 A.2d 365 (1940). "By the weight of authority refusal of marital intercourse is not in itself desertion, but becomes so only when coupled with a substantial abandonment of other marital duties."
- Holden v. Holden, 4 Conn. Sup. 499, 499 (1937). "The question to be answered by this memorandum is whether the fact that the defendant voluntarily contributed to his wife's support from the time of his departure from their home to the date of the trial of this action is a bar to a decree in favor of the plaintiff wife on the ground of desertion."

WEST KEY NUMBERS:

DIGESTS:

ENCYCLOPEDIAS:

- *Divorce* #37. Desertion or absence
- [CONNECTICUT FAMILY LAW CITATIONS](#): *Fault*
- [DOWLING'S CONNECTICUT DIGEST](#): *Dissolution of Marriage* § 8
- [WEST'S CONNECTICUT DIGEST](#): *Divorce, II. Grounds, 37. Desertion or absence.*
- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
 - Desertion
 - §§ 58-67. In general
 - Justification for separation; constructive desertion
 - §§ 68-69. In general

§§ 70-76. Acts or conduct constituting constructive
desertion

§§ 77-80. Offer of reconciliation

- 27A [C.J.S. Divorce](#) (2005).
§§ 66-79. Desertion or Abandonment

ALR INDEX:

- Divorce and Separation
 - Abandonment of persons

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 15 Dissolution of marriage in general
§ 15.8. Willful desertion for one year

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Table 2: Constructive Desertion

Constructive Desertion	
Connecticut Superior Court	<p>“In other jurisdictions, it is almost universally held that conduct on the part of one spouse which reasonably forces the other spouse to leave the home constitutes desertion by the first spouse as a ground for divorce, and this is generally held to be true whether the misconduct was indulged in with the specific intent of forcing the other spouse to leave the home or not.” Finn v. Finn, 13 Conn. Sup. 169, 170 (1944)</p> <p>“It must therefore be concluded that in this State, as well as in other jurisdictions, constructive desertion is desertion within the meaning of that term as used in the divorce statute and that where a wife separates from her husband for adequate cause and he, for a period of three years thereafter, shows no indication of a purpose to change the course of conduct which has justified the separation, then she is entitled to a divorce on the ground of desertion.” <i>Ibid.</i>, pp. 170-171.</p>
Connecticut Supreme Court	<p>“According to the rule as it has been stated in jurisdictions where it has been adopted, where a spouse intentionally brings the cohabitation to an end by misconduct which renders the continuance of marital relations so unbearable that the other leaves the family home, the former is the deserter and the latter may obtain a divorce on that ground.” Lindquist v. Lindquist, 137 Conn. 165, 169, 75 A.2d 397 (1950).</p> <p>“Where the rule has been adopted, serious misconduct upon the part of the offending spouse is held essential to its application. In no event could misconduct of an offending husband be held to afford a basis for a decree on the ground of constructive desertion unless it was so improper as to defeat the essential purposes of the marriage relation or give the wife good reason to believe that cohabitation could no longer be continued with due regard to her health or safety or otherwise render continued cohabitation intolerable. <i>Ibid.</i></p>

Section 1.2d: Seven Years' Absence

A Guide to Resources in the Law Library

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
[§ 46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation.
“A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (6) seven years’ absence, during all of which period the absent part has not been heard from”

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
[§ 25-7](#). Pleadings in general; Amendments to Complaint or Application
[§ 25-8](#). —Amendment; New Grounds for Dissolution of Marriage or Civil Union
[§ 25-9](#). —Answer, Cross Complaint, Claims for Relief by Defendant
[§ 25-10](#). —Answer to Cross Complaint

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- *Cikora v. Cikora*, 133 Conn. 456, 457, 52 A.2d 310 (1947).
“This action for divorce was brought on two grounds: desertion, and seven years’ absence, during all of which period the absent party had not been heard from.”

Even where a defendant has gone to parts unknown, very likely outside the State, it may well be that publication in the place of the former marital residence is the form of notice most apt to bring the pendency of the action to his attention, because of the likelihood that there will be relatives or friends there who have means of communicating information to him directly or indirectly. The trial court was in error in striking the case from the docket on the ground that it was without jurisdiction to try the case.” p. 462

WEST KEY NUMBERS:

- Divorce #37. Desertion or absence

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#): *Fault*
- [DOWLING’S CONNECTICUT DIGEST](#): Dissolution of Marriage #7
- [WEST’S CONNECTICUT DIGEST](#): *Divorce, II. Grounds, 37. Desertion or absence.*

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 15. Dissolution of marriage in general
§ 15.9. Continuous absence for seven years

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Section 1.2e: Habitual Intemperance

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon grounds of habitual intemperance.

DEFINITIONS:

- “When our legislature, in 1843, adopted as grounds of divorce *a vinculo*, ‘**habitual intemperance**’ and ‘intolerable cruelty,’ it used these words with their ordinary meaning, but with special reference to what had been since 1639 our settled policy in respect to divorce; i.e., marriage is a life status and should never be dissolved, unless one of the parties is guilty of conduct which in itself is a practical annulling and repudiation of the marriage covenant. Wilful desertion for such a length of time as the statute says shall conclusively prove a permanent abandonment and repudiation of all marital rights and duties, had been a ground for divorce. Following this analogy the legislature, in 1843, made grounds of divorce: **intemperance so long continued that the fixed habit renders the party incapable of performing the duties of the marriage relation**; and cruelty of such a nature as to be intolerable, and to render a continuance of the relation by the suffering victim impracticable.” Morehouse v. Morehouse, 70 Conn. 420, 426-427, 39 A. 516 (1898). [emphasis added]

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
[§46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation.
“A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (7) habitual intemperance”

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
[§ 25-7](#). Pleadings in general; Amendments to Complaint or Application
[§ 25-8](#). —Amendment; New Grounds for Dissolution of Marriage or Civil Union
[§ 25-9](#). —Answer, Cross Complaint, Claims for Relief by Defendant
[§ 25-10](#). —Answer to Cross Complaint

CASES:

- Dyke v. Dyke, No. FA 01 0187101S (Conn. Super. Ct., J.D. Stamford, Feb. 10, 2005). “Very little was offered by either party regarding the imbibing habits of the defendant in his

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

use of alcoholic beverage. There was no claim that it interfered with his ability to work as was required by 'habitual intemperance'" (Sec. 46b-40(c)(7))."

- Welch v. Welch, No. FA 00-0072505 (Ct. Super. J.D. Tolland, May 17, 2002), 2002 WL 1332028 (Conn. Super. 2002). "The case law regarding what facts the court must find in order to conclude that a divorce should be granted on the grounds of habitual intemperance are sparse. However, in *Dennis v. Dennis*, 68 Conn. 186, 192-194 (1896), the court held that in order to establish habitual intemperance as a grounds for a divorce, it must be established that the habit' was so gross or so long continued as to produce suffering or want in the family. Excessive indulgence in alcohol is not sufficient."
- Fagan v. Fagan, 131 Conn. 688, 689, 42 A.2d 41 (1945). "A detailed rehearsal of the marital difficulties of these parties would serve no useful purpose. The trial court concluded that the plaintiff was both intolerably cruel and habitually intemperate to the point that the public and personal objects of matrimony have been destroyed beyond rehabilitation, and that the custody of the minor child of the marriage should be awarded to the defendant."
- Wilhelm v. Wilhelm, 13 Conn. Sup. 270, 271 (1945). "He also frequently indulged to excess in alcoholic liquor. This indulgence, however, was not such as to cause any want to the family or suffering, except as it was reflected in the intolerable cruelty. For that reason his habitual intemperance was not such as to provide a ground for divorce independently of the intolerable cruelty."
- Hickey v. Hickey, 8 Conn. Sup. 445, 446 (1940). "In order to constitute a ground for divorce habitual intemperance must be such that it produces at some substantial suffering and does material harm to the marriage relationship."
- Purcell v. Purcell, 101 Conn. 422, 425 (1924). "The subordinate facts found as to intoxication, as set forth in the statement of facts, do not disclose that the defendant's use of intoxicants was so gross as to produce want or suffering in the family, either objective or subjective, to a degree which could not reasonably be borne, or which disqualified the defendant from attending to his business; under these circumstances, the conclusion that the subordinate facts did not establish habitual intemperance, cannot be held to be illegal or illogical"
- Dennis v. Dennis, 68 Conn. 186, 192 (1896). "Habitual intemperance as a cause for which a divorce might be granted, was first named in this State by a statute enacted in 1843, where it was coupled with intolerable cruelty."

Precisely what constitutes intemperance within the meaning of that statute, it is not easy to easy to define. It may however be safely assumed that the purpose of the

Act was not primarily to promote temperance or to reform the offender, but to preserve the peace, comfort, safety, happiness and prosperity, of the non-offending party, and of the family of which they are together the members and parents.”

WEST KEY NUMBERS:

- *Divorce* #22. Habitual drunkenness
#27(15). Cruelty. Habitual drunkenness or use of opiates or narcotics as cruelty

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#): *Fault*
- [DOWLING’S CONNECTICUT DIGEST](#): *Dissolution of Marriage* § 7
- [WEST’S CONNECTICUT DIGEST](#): *II. Grounds, 22. Habitual drunkenness*

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§§ 83-86. Habitual drunkenness or drug addition
- 27A [C.J.S.](#) *Divorce* (2005).
§ 97. Habitual drunkenness
§ 85. Personal indignities. Particular acts, conduct and condition. Drunkenness and use of drugs

ALR INDEX:

- Divorce and Separation
 - Habitual intemperance

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 15 Dissolution of marriage in general
§ 15.10. Habitual intemperance

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Section 1.2f: Intolerable Cruelty

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon the grounds of intolerable cruelty.

DEFINITIONS:

- **Intolerable cruelty** "The term 'intolerable cruelty' as used in our statute involves two distinct elements, and the acts which are claimed to constitute it must be, either singly or in combination, not only cruel but intolerable." Swist v. Swist, 107 Conn. 484, 489 (1928).
- Nowak v. Nowak, 23 Conn. Sup. 495, 497, 185 A.2d 83 (1962). "Incompatibility of personalities is not and has never been a ground for divorce in Connecticut. Under our law, married persons are expected to accept the ordinary vicissitudes of marriage caused by unwise mating, unhappy situations, unruly tempers and common quarrels or marital wranglings. To constitute intolerable cruelty, the consequences must be serious."
- "When our legislature, in 1843, adopted as grounds of divorce *a vinculo*, 'habitual intemperance' and '**intolerable cruelty**,' it used these words with their ordinary meaning, but with special reference to what had been since 1639 our settled policy in respect to divorce; i.e., marriage is a life status and should never be dissolved, unless one of the parties is guilty of conduct which in itself is a practical annulling and repudiation of the marriage covenant. Willful desertion for such a length of time as the statute says shall conclusively prove a permanent abandonment and repudiation of all marital rights and duties, had been a ground for divorce. Following this analogy the legislature, in 1843, made grounds of divorce: intemperance so long continued that the fixed habit renders the party incapable of performing the duties of the marriage relation; and **cruelty of such a nature as to be intolerable, and to render a continuance of the relation by the suffering victim impracticable.**" Morehouse v. Morehouse, 70 Conn. 420, 426-427, 39 A. 516 (1898). [emphasis added]

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011). [§46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation.
"A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (8) intolerable cruelty . . ."

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
Dissolution of Marriages in Connecticut-29

- [§ 25-7.](#) Pleadings in general; Amendments to Complaint or Application
- [§ 25-8.](#) —Amendment; New Grounds for Dissolution of Marriage or Civil Union
- [§ 25-9.](#) —Answer, Cross Complaint, Claims for Relief by Defendant
- [§ 25-10.](#) —Answer to Cross Complaint

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Evans v. Taylor](#), 67 Conn. App. 108, 115, 786 A.2d 525 (2001). “In its memorandum of decision, the court noted, on the basis of the testimony of the parties, that the marriage of the parties was troubled from the start and that each party believed that he or she was mistreated by the other. It also noted that although the defendant claimed that the plaintiff’s treatment of her over the course of their seven year marriage was intolerable, she tolerated it by not moving from the marital home until her husband filed an action for dissolution, despite the fact that she had the financial means to do so. Finally, the court noted that some of the difficulties in what was a stormy marriage, arose from the verbal abuse by the defendant toward the plaintiff. On the basis of those observations, the court stated that the defendant failed to prove her claim of intolerable cruelty.”
- [Garrison v. Garrison](#), 190 Conn. 173, 180-181, 460 A.2d 945 (1983). “The trial court’s finding that the behavior of the defendant constituted a continuing course of conduct is clearly supported by the record. In cases like the one before us, it would be archaic and absurd to hold that the plaintiff was under an obligation to be beaten more often in order to establish a continuing course of conduct. The facts found indicate that the defendant’s attitude toward the plaintiff had become indifferent and uncaring for months before the striking incidents. He was at times openly hostile and cruel, as when he confronted the plaintiff with his own adultery. He had struck her twice, for no apparent reason. In this atmosphere, a person in the plaintiff’s position could reasonably believe that the physical abuse would either continue or escalate. It would thereafter be reasonable to consider that the continuation of the marital relationship would be unbearable. The trial court did not err, but reasonably concluded that the defendant’s actions constituted intolerable cruelty.”
- [Richards v. Richards](#), 153 Conn. 407, 409, 216 A.2d 822 (1966). “Whether intolerable cruelty exists or not in a particular case is ordinarily a conclusion of fact for the trier to draw. Where not so drawn, it is only in exceptionally aggravated cases, where the mere statement of the evidential facts demonstrates the intolerable character of the defendant’s alleged cruelty, that this court is warranted in treating that fact as established.”
- [Bloomfield v. Bloomfield](#), 144 Conn. 568, 568-69, 135 A.2d 736 (1957). “There must be not only proof of acts of cruelty on the part of the defendant but also proof that in

their cumulative effect upon the plaintiff they are intolerable in the sense of rendering the continuance of marital relation unbearable.”

- Nowak v. Nowak, 23 Conn. Sup. 495, 498. 185 A.2d 83 (1962). “Our courts have never adopted the policy, which some jurisdictions have followed, ‘of comparative guilt.’”
- Vanguilder v. Vanguilder, 100 Conn. 1, 3, 122 A. 719 (1923). “It is enough to repeat that, as the phrase imports, intolerable cruelty has a subjective as well as an objective significance. There must not only be proof of acts of cruelty has on the part of the defendant, but proof that in their cumulative effect upon the plaintiff they are intolerable in the sense of rendering the continuance of the marital relation unbearable by him.”

WEST KEY NUMBERS:

- *Divorce* #27. Cruelty

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#): *Cruelty*
- [WEST’S CONNECTICUT DIGEST](#): *Divorce, II. Grounds, 27. Cruelty*

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008). §§ 34-55. Cruelty
- 27A [C.J.S.](#) *Divorce* (2005). §§ 40-48. Cruelty in General
- *Mental Cruelty*, 21 [POF](#) 191 (1968).

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010). Chapter 15. Dissolution of marriage in general § 15.11. Intolerable cruelty

LAW REVIEWS:

- Victor M. Gordon, *Intolerable Cruelty As A Ground For Divorce In Connecticut*, 21 [CONNECTICUT BAR JOURNAL](#) 64 (1947).

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Originally compiled by Lawrence Cheeseman, retired Judicial Branch Supervising Law Librarian.

Section 1.2g: Imprisonment / Infamous Crime

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon grounds of sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year.

DEFINITIONS:

- “. . . the three essentials to a divorce upon this ground are: (1) the commission by the defendant of an infamous crime, (2) involving a violation of conjugal duty, and (3) punishable by imprisonment in the state prison.” Swanson v. Swanson, 128 Conn. 128, 129, 20 A.2d 617 (1941).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
[§46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation.
“A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (9) sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year”

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
[§ 25-7](#). Pleadings in general; Amendments to Complaint or Application
[§ 25-8](#). —Amendment; New Grounds for Dissolution of Marriage or Civil Union
[§ 25-9](#). —Answer, Cross Complaint, Claims for Relief by Defendant
[§ 25-10](#). —Answer to Cross Complaint

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Cugini v. Cugini, 13 Conn. App. 632, 636, 538 A.2d 1060 (1988). “The defendant also claims an abuse of discretion by the trial court in permitting an amendment to the complaint to allege as an additional ground for dissolution that he had been convicted of an infamous crime. This is one of the grounds upon which dissolution may be sought; General Statutes 46b-40(c)(9); and, in any event, it was not the ground upon which dissolution was granted in this case.”
- Sweet v. Sweet, 21 Conn. Sup. 198, 202, 151 A.2d 350 (1957). “From the broad range of the crime as above described, it is apparent that while there might be acts which would violate the statute and at the same time be a violation of conjugal duty, it is, nevertheless, equally true that there might be many violations of the statute which would not amount to a violation of conjugal duty. In fact, acts which might impair the morals of a child as alleged in the information here involved would not necessarily be acts

in violation of conjugal duty.”

- Donovan v. Donovan, 14 Conn. Sup. 429, 430 (1947). “. . . the conviction of an indecent assault upon a minor female is conviction of an infamous crime involving breaching of conjugal duty.”
- Swanson v. Swanson, 128 Conn. 128, 130-131, 20 A.2d 617 (1941). “It is our conclusion that the defendant’s conviction of assault with intent to commit rape established the commission by him of an infamous crime involving a violation of conjugal duty and punishable by imprisonment in the state prison”

WEST KEY NUMBER:

- *Divorce* #24. Person infirmities and conditions arising after marriage. Conviction and imprisonment for crime

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§ 33. Necessity of voluntariness. Effect of imprisonment
§§ 81-82. Conviction of crime
- 27A [C.J.S.](#) *Divorce* § 61 (2005).
§89. Conviction of crime

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 15 Dissolution of marriage in general
§ 15.12. Imprisonment; life sentence or commission of infamous crime

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Originally compiled by Lawrence Cheeseman, retired Judicial Branch Supervising Law Librarian.

Section 1.2h: Confinement / Mental Illness

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon grounds of legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint.

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

COURT RULES:

- CONN. GEN. STAT. (2011).
[§ 46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation.
"A decree of dissolution of a marriage . . . shall be granted upon a finding that one of the following causes has occurred . . . (10) legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint."
- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
[§ 25-7](#). Pleadings in general; Amendments to Complaint or Application
[§ 25-8](#). —Amendment; New Grounds for Dissolution of Marriage or Civil Union
[§ 25-9](#). —Answer, Cross Complaint, Claims for Relief by Defendant
[§ 25-10](#). —Answer to Cross Complaint

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Parker v. Parker](#), 16 Conn. Sup. 128, 130 (1949). "There has been no actual confinement of the defendant for five years prior to February 13, 1948, when the action was commenced."

DIGESTS:

- West Key Numbers: Divorce #26

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§§ 102-106. Insanity or mental incapacity
- 27A [C.J.S.](#) *Divorce* § 68 (2005).
§ 100. Insanity or other mental incompetency

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 15 Dissolution of marriage in general
§ 15.13. Five-Year confinement for mental illness

COMPILER:

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Originally compiled by Lawrence Cheeseman, retired Judicial Branch Supervising Law Librarian.

Section 1.3: Multiple Grounds

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to dissolution of marriage (divorce) based upon multiple grounds.

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
[§ 46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
[§ 25-7](#). Pleadings in general; Amendments to Complaint or Application
[§ 25-8](#). —Amendment; New Grounds for Dissolution of Marriage or Civil Union
[§ 25-9](#). —Answer, Cross Complaint, Claims for Relief by Defendant
[§ 25-10](#). —Answer to Cross Complaint

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Sweet v. Sweet](#), 190 Conn. 657, 660, 462 A.2d 1031 (1983). "The contention . . . that a determination of irretrievable breakdown precludes the court from considering the causes of the dissolution in making financial awards is erroneous."
- [Gluck v. Gluck](#), 181 Conn. 225, 227, 435 A.2d 35 (1980). "Next, the defendant asserts that General Statutes 46b-40 (c), to the extent that it authorizes the dissolution of a marriage if the marriage has broken down irretrievably . . . nullifies the other grounds for dissolution The gravamen of the unparticularized claim that irretrievable breakdown nullifies the other grounds for dissolution set forth in 46b-40 (c) and prevents defenses appears to be that the legislature has sanctioned divorce on demand. This claim too was rejected in *Joy v. Joy*"
- [Joy v. Joy](#), 178 Conn. 254, 255-256, 423 A.2d 895 (1979). "The absence of objective guidelines does not mean an abdication of judicial function, nor does it signal, as the defendant argues, that a court determining whether a marriage has in fact irretrievably broken down is acting purely ministerially or is granting a divorce 'upon demand.' It does, however, sustain the trial court's conclusion that the defendant's decision to rearrange his business ventures after the initiation of divorce proceedings does not necessarily repair the rupture in the marital relationship that had previously occurred."

- Edge v. Commissioner Of Welfare, 34 Conn. Sup. 284, 286, 388 A.2d 1193 (1978). “. . . although fault need not be established in dissolution of marriage actions, fault can still be an element to be raised in dissolution actions for purposes of establishing the support obligation of either spouse to the other.”
- Christoni v. Christoni, 156 Conn. 628, 629, 239 A.2d 533 (1968). “Where more than one ground for a divorce is claimed and one alleged ground is proved, it is immaterial whether or not the additional statutory ground or grounds may also exist.”

WEST KEY NUMBERS:

- *Divorce # 12 - 38. Grounds*

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#): *Fault*

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010). Chapter 15. Dissolution of marriage in general
 § 15.4. Other grounds for dissolution
 § 15.14. Defenses

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Originally compiled by Lawrence Cheeseman, retired Judicial Branch Supervising Law Librarian.

Section 1.4: Defenses

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to defenses to grounds for dissolution of marriage (divorce).

DEFINITIONS:

- "The defenses of recrimination and condonation have been abolished." [Venuti v. Venuti](#), 185 Conn. 156, 157, 440 A.2d 878 (1981).
- **Condonation:** "the principle relied upon means only that an aggrieved spouse actually forgives and forgets." [Toolan v. Toolan](#), 15 Conn. Sup. 277, 277 (1948).
- **Recrimination** "is generally defined as a rule or doctrine which precludes one spouse from obtaining a divorce from the other, where the spouse seeking the divorce has himself or herself been guilty of conduct which would entitle the opposite spouse to a divorce." [Courson v. Courson](#), 117 A.2d 850, 851, 208 Md. 171 (1955).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
[§ 46b-40\(c\)](#). Fault and no fault grounds for divorce or legal separation
[§ 46b-52](#). Recrimination and condonation abolished.
"The defenses of recrimination and condonation to any action for dissolution of marriage or legal separation are abolished."

COURT RULES:

- CONN. PRACTICE BOOK (2012).
[Chapter 25. Procedure in Family Matters](#)

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Dervin v. Dervin](#), 27 Conn. Sup. 459, 462 (1968). "That a person having property is incapable of managing his affairs and has a conservator appointed to do so in their behalf does not warrant a finding or interpretation in and of itself that such person is insane. What was said in the [Dochelli \[v. Dochelli\]](#) case, supra, [125 Conn. 468,] 470, applies with even greater force: 'This does not connote insanity in the narrower sense and will not avail as a defense.'"

WEST KEY NUMBERS:

- DIVORCE
 - # 38.5 In general
 - # 39 Nonexistence or invalidity of marriage
 - # 40 Agreement for separation
 - # 41 Mistake of law

- # 42 Mistake of fact
- # 43 Insanity
- # 44 Drunkenness
- # 45 Connivance
- # 46 Provocation
- # 47 Condonation
- # 52 Recrimination
- # 56 Collusion
- # 57 Courts invested with jurisdiction
- # 58 Jurisdiction of cause of action
- # 65. Jurisdiction of the person

DIGESTS: • [WEST'S CONNECTICUT DIGEST](#): *Divorce, III. Defenses.*

ENCYCLOPEDIAS: • 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§§ 107-169. Defenses

• 27A [C.J.S.](#) *Divorce* (2005).
§§ 101-141. Defenses: circumstances precluding divorce

ALR INDEX: • Divorce and Separation
• Defenses

TEXTS & TREATISES: • 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 15 Dissolution of marriage in general
§ 15.2. Breakdown of marriage relationship
§ 15.14. Defenses

PERIODICALS: • Edward Y. O'Connell, Comment, *Recrimination In Connecticut*,
27 [CONNECTICUT BAR JOURNAL](#) 376 (1953).

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Section 2: Procedures

A Guide to Resources in the Law Library

SCOPE:

- Selected bibliographic resources relating to procedures in a dissolution of marriage (divorce) commenced after October 1, 1997

DEFINITIONS:

- **Jurisdiction:** "The Superior Court shall have exclusive jurisdiction of all complaints seeking a decree of annulment, dissolution of a marriage or legal separation." [CONN. GEN. STAT. § 46b-42 \(2011\)](#).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT (2011).
Chapter 815j. Dissolution of marriage, legal separation and annulment
 - [§ 46b-44](#). Residency requirements
 - [§ 46b-45](#). Service and filing of complaint
 - [§ 46b-46](#). Notice to nonresident party
 - [§ 46b-53](#). Conciliation procedures; privileged communications.
 - [§ 46b-67\(a\)](#). 90-day waiting period.

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. **Procedure in Family Matters**
 - [§ 25-2](#). Complaint for Dissolution of Marriage or Civil Union, Legal Separation
 - [§ 25-3](#). Action for Custody of Minor Children
 - [§ 25-5](#). Automatic Orders upon Service of Complaint or Application
 - [§ 25-11](#). Order of Pleadings
 - [§ 25-27](#). Motion for Contempt
 - [§ 25-28](#). Order of Notice
 - [§ 25-30](#). [Sworn] Statements to be filed
 - [§ 25-49](#). Definitions [Uncontested, Limited Contested and Contested Matters]
 - [§ 25-50](#). Case Management
 - [§ 25-51](#). When Motion for Default for Failure to Appear Does Not Apply
 - [§ 25-52](#). Failure to Appear for Scheduled Disposition
 - [§ 25-57](#). Affidavit concerning [custody] Children
 - [§ 25-58](#). Reports of Dissolution of Marriage or Civil Union

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Parotta v. Parotta](#), 119 Conn. App. 472, 475, 482-483, 988 A.2d 383 (2010). "...the court,..., heard argument on the defendant's motion to transfer and, treating it as a motion for modification of the automatic orders, ordered the sum of the \$100,000 to be wired from a brokerage account in the defendant's name directly to the account of his criminal defense attorney, to be used for legal fees and expert witness fees in conjunction with the pending criminal charges...Finally, the court indicated that the \$100,000 sum would be considered a draw against the defendant's share of the equitable distribution of property at the time of the final hearing in the dissolution action...We believe that the automatic orders in marital dissolution judgments are most akin to temporary injunctions on the basis that they represent a temporary restraint on the use of or alienation of one's assets pending full adjudication on conjunction with a final hearing...As in the case of a temporary injunction, the purpose of the automatic orders in marital dissolution cases is simply to maintain the status quo while the action is pending. And, as a permanent injunction typically encompasses the relief sought or granted by the temporary injunction, a dissolution judgment similarly assigns, to one party or the other, the property that was subject to the injunctive effect of the automatic orders..."
- [Chambers v. Stewart](#), 2012 Ct. Sup. 504, 53 CLR 315, No. FST CV 09 501 2130 S. "Plaintiff has a three- count complaint which alleges that two mortgages which the defendant holds on the plaintiff's home are invalid because they violate the automatic orders (hereafter "orders") which were entered at the commencement of the dissolution action between the plaintiff and his former spouse and were in effect at the time the mortgages were given...There is nothing in either the Rule (Rule 25-5) or in Form JD-FM-158 which expressly imposes a duty on third parties to take notice of or abide by the prohibitions contained in the rule. It is undeniable that the Judges of the Superior Court could easily have added language to the rule to indicate that the automatic order was indeed intended to be binding on third parties. *Provencher v. Enfield*, 284 Conn. at 785, *supra*. In fact, a contrary intention appears from the fact that that the rule making authority has chosen the remedy of a contempt proceeding as a means of enforcement and have said so in bold upper case letters. Thus, it is fair to infer that the automatic order was designed for no other purpose than to control the conduct of the parties during the pendency of the action. "

FORMS:

- Court Forms (Official)
 - [JD-FM-3](#) Summons Family Action
 - [JD-FM-158](#) Notice of automatic orders
 - [JD-FM-75](#) Application for waiver of fees/appointment of counsel
 - [JD-FM-167](#) Motion for order of notice in family cases
 - [JD-FM-168](#) Order of notice in family cases
 - [JD-FM-165A](#) Case management dates- Danbury, Hartford, Litchfield, Middletown, New Britain, New London, Norwich, Putnam
 - [JD-FM-165B](#) Case management dates- Bridgeport, Milford, New Haven, Stamford
 - [JD-FM-165C](#) Case management dates- Meriden, Rockville, Waterbury
 - [JD-FM-163](#) Case management agreement
 - [JD-FM-149](#) Parent education program—order, certificate and results
 - VS-63 Health Department form
 - [JD-FM-164](#) Affidavit concerning children
 - [JD-FM-164A](#) Addendum to affidavit concerning children
 - [JD-FM-6](#) Financial affidavit; [JD-FM-6H](#) Help text for financial affidavit
 - [JD-CL-12](#) Appearance; [JD-CL-12H](#) Help text for appearance form (with Spanish translation)
 - [JD-CL-12s](#) Apersonamiento
- [HANDBOOK OF FAMILY FORMS FOR THE CONNECTICUT LAWYER](#)
 - Motion for custody and support pendente lite, Form VI-C-2, p. 108
 - Motion for temporary joint custody and determination of joint custodial rights, Form VI-C-4, p. 110
 - Grandparents' motion to intervene, Form VI-C-7, p. 114
 - Grandparents' motion for visitation, Form VI-C-8, p. 115
 - Motion to limit visitation, Form VI-C-9, p. 116
 - Ex parte temporary injunction, Forms VII-A-6a to VII-A-6e, pp.145-150
- [LIBRARY OF CONNECTICUT FAMILY LAW FORMS](#), Thomas D. Colin, Editor. (2008).
 - 1-001 Appearance (court form)
 - 1-002 Summons (court form)
 - 1-003 Summons
 - 1-004 Divorce Complaint (court form)
 - 1-005 Complaint with Notice of Automatic Orders

WEST KEY NUMBERS:

- West Key Numbers: *Divorce*
 - # 57-65. Jurisdiction
 - # 70-74. Parties
 - # 76-80. Process or notice
 - # 88-108. Pleading
 - # 109.1-137. Evidence
 - # 140-150.1. Trial or hearing

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#) Practice and Procedure
Dissolution of Marriages in Connecticut-42

- [WEST'S CONNECTICUT DIGEST](#): Divorce, IV. Proceedings

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§§ 170-356. Practice and procedure

- 27A [C.J.S.](#) *Divorce* (2005).
§§ 142-458. Proceedings, trial, and judgments

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 16. Jurisdiction
Chapter 17. Parties
Chapter 18. Process
Chapter 19. Pleadings

- [STATE OF CONNECTICUT JUDICIAL BRANCH. DO IT YOURSELF DIVORCE GUIDE](#). JDP-FM-179 Rev. 5-05. and Supplement.

- BARBARA KAHN STARK ET AL., [FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT: PLANNING, NEGOTIATING AND FILING YOUR DIVORCE](#) (2003).
Chapter 6. Getting divorced: procedures and paperwork.

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Section 2.1: Jurisdiction

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the residency requirement for:

- filing a complaint for dissolution of marriage
- issuing a decree dissolving a marriage

SEE ALSO:

- § 3.2. Motion to dismiss

DEFINITIONS:

- **JURISDICTION:** "is the power in a court to hear and determine the cause of action presented to it. Jurisdiction must exist in three particulars: the subject matter of the case, the parties, and the process." [Brown v. Cato](#), 147 Conn. 418, 422, 162 A.2d 175 (1960).
- **DOMICIL:** "To constitute domicile, the residence at the place chosen for the domicile must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicile of the person in which he has voluntarily fixed his habitation, not for mere temporary or special purpose, but with present intention of making it his home, unless something which is uncertain or unexpected shall happen to induce him to adopt some other permanent home." [Mills v. Mills](#), 119 Conn. 612, 617, 179 A. 5 (1935).
- **RESIDENCE:** "while domicile is essential to 'final judgment' residence alone provides jurisdiction for filing a dissolution complaint." [Sauter v. Sauter](#), 4 Conn. App. 581, 582, 495 A.2d 1116 (1985).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
 - Residency requirement for filing a complaint for dissolution of marriage and for temporary relief [§ 46b-44 \(a\)](#). A complaint for dissolution of a marriage or for legal separation may be filed at any time after either party has established residence in this state. [§ 46b-44 \(b\)](#). Temporary relief pursuant to the complaint may be granted in accordance with sections 46b-56 and 46b-83 at any time after either party has established residence in this state.
 - Residency requirement for decree dissolving a marriage [§ 46b-44 \(c\)](#). A decree dissolving a marriage or granting a legal separation may be entered if: (1) One of the parties to the marriage has been a resident of this state for at least the twelve months next preceding the date of the filing of the complaint or next preceding the date of the decree; or (2) one of the parties was domiciled in this state at the time of the marriage and returned to this state with the intention of permanently remaining before the filing of the complaint; or (3) the cause for the dissolution of the marriage arose after either party moved into this state.

[§ 46b-44 \(d\)](#). For the purposes of this section, any person who has served or is serving with the armed forces, as defined by section 27-103, or the merchant marine, and who was a resident of this state at the time of his or her entry shall be deemed to have continuously resided in this state during the time he or she has served or is serving with the armed forces or merchant marine.

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Jungnelius v. Jungnelius](#), 133 Conn. App. 250, 255, 258-259, 35 A.3d 359 (2012). "B. Residency Requirement to Establish Subject Matter Jurisdiction...our Supreme Court precedent only requires the plaintiff to establish that for the twelve months before the date the complaint was filed ...that either she or the defendant were domiciled in Connecticut with substantially continuous residence....Our Supreme Court discussed the elements of domicile in *Adame v. Adame*, 154 Conn. 389, 225 A2d. 188 (1966). In that case, the court wrote: "The requisites of domicile are actual residence coupled with the intention of permanently remaining...The intention is a fact which must be found by the court....and the intention must be to make a home at the moment, not to make a home in the future. We discussed the concept of domicile at length in *McDonald v. Hartford Trust Co.*, 104 Conn 169, 132 A. 902 (1926), where we noted that a domicile once acquired continues until another is established and that the law does not permit one to abandon, nor recognize an abandonment of, a domicile until another has been established. ""
- [W. v. W.](#), 256 Conn. 657, 666, 779 A.2d 716 (2001). "Furthermore, even if it is the biological father who has been located at the address discovered by the plaintiff, this court does not have jurisdiction over him. He lives in Massachusetts. It is not alleged that he has ever been in Connecticut, that he has ever been married to the plaintiff, that he knows he is the father of the child, or that he has been served with any notice of these proceedings. As a result, this court cannot bring this individual before us pursuant to General Statutes §§ 46b-44 and 46b-46 in order to resolve the issue of support. Therefore, we conclude that the trial court did not abuse its discretion in applying the doctrine of equitable estoppel in this case."
- [Charles v. Charles](#), 243 Conn. 255, 256, 701 A.2d 650 (1997). "The sole issue on appeal is whether the Superior Court has subject matter jurisdiction, pursuant to General Statutes § 46b-44 (c)(1), over a dissolution of marriage action brought by an individual who is not a resident of Connecticut against a member of the Mashantucket Pequot Indian Tribe (tribe) who resides on the tribe's reservation in Ledyard. We answer this question in the affirmative."
- [Sauter v. Sauter](#), 4 Conn. App. 581, 584-585, 495 A.2d 1116 (1985). "The pendency of an action in one state is not a ground for abatement of a later action in another state In the interests of judicial economy, a court

may, in the exercise of its discretion, order that the second action be stayed during the pendency of the first action, even though the actions are pending in different jurisdictions.”

- [Taylor v. Taylor](#), 168 Conn. 619, 620-621, 362 A.2d 795 (1975). “the burden of proving an allegation of lack of jurisdiction . . . falls upon the party making that claim”
- [Hames v. Hames](#), 163 Conn. 588, 595, 316 A.2d 379 (1972). “Obviously, even if canon law should deny the authority of the state to dissolve a marriage, religious doctrine could not nullify the decrees of our courts. U.S. Const., amend. 1, 14.”

WEST KEY NUMBERS:

- *Divorce* # 57 Courts invested with jurisdiction
62 Domicile or residence of parties
64 Acquisition of domicile for purpose of divorce
65 Jurisdiction of the person

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#)
Jurisdiction of Court
- [WEST'S CONNECTICUT DIGEST](#): *Divorce, IV. Proceedings, (A) Jurisdiction*

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§§ 170-196. Jurisdiction
- 27A [C.J.S.](#) *Divorce* (2005).
§§ 147-169. Jurisdiction and venue

ALR INDEX:

- Divorce and Separation
 - Jurisdiction
 - Residence or domicile

TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 16. Jurisdiction.
 - § 16.1. In general
 - § 16.2. Residence requirements
 - § 16.3. What constitutes residence
 - § 16.4. Twelve month continuous residency requirement
 - § 16.5. Jurisdiction based on domicile in the State at the time of marriage
 - § 16.6. Jurisdiction based on cause of dissolution arising in the state
 - § 16.7. Consent to jurisdiction
 - § 16.8. Venue
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, [STEPHENSON'S CONNECTICUT CIVIL PROCEDURE](#) (3rd ed. 2002).
Chapter 20. Family law procedures
 - § 243. Exclusive jurisdiction of superior court; Venue

- § 244. Jurisdiction required for dissolution; Domicile
 - a. Jurisdiction generally
 - b. Domicile as basis for dissolution generally
 - c. Domicile as requirement in Connecticut
 - d. What constitutes domicile
 - e. Jurisdiction over nonresidents
 - f. Jurisdiction over members of an Indian tribe
 - g. Loss of jurisdiction upon death of a party
 - h. Voluntary relinquishment of jurisdiction; Forum non Conveniens
 - i. Foreign judgments
- § 245. Residence requirements
- § 246. Exceptions to residence requirements

- BARBARA KAHN STARK ET AL., [FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT: PLANNING, NEGOTIATING AND FILING YOUR DIVORCE](#) (2003).
 - Chapter 6, "Getting divorced: procedures and paperwork"
 - Who may file in Connecticut, p. 92
 - Jurisdiction, p. 110
- ALI [RESTATEMENT OF THE LAW CONFLICT OF LAWS, 2D](#)
 - Chapter 3, Judicial jurisdiction
 - Topic 3. Jurisdiction over status
 - Title B. Jurisdiction for divorce

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Table 3: Domicile

Domicile	
Leaving	"When the parties left this State with the intention of never returning, their domicile in Connecticut was not thereby changed. The former domicile persists until a new one is acquired. <u>Mills v. Mills</u> , 119 Conn. 612, 617-618, 617, 179 A. 5 (1935).
Abandonment	"The law does not permit one to abandon, nor recognize an abandonment of a domicile until another has been established." <u>McDonald v. Hartford Trust Co.</u> , 104 Conn. 169, 177, 132 A. 902 (1926).
Compared to address	"An 'address' is not domicile, and a person may have simultaneously two or more residence addresses but only one domicile at any one time." <u>Taylor v. Taylor</u> , 168 Conn. 619, 620-621, 362 A.2d 795 (1975).

Section 2.2: Process

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic sources relating to the procedures for service of process in an action for dissolution of marriage.

DEFINITIONS:

- **PROCESS:** "shall be a writ of summons or attachment, describing the parties, the court to which it is returnable and the time and place of appearance, and shall be accompanied by the plaintiff's complaint." Conn. Practice Book § 8-1(a) (2012 ed.)
- **MANNER OF SERVICE:** "Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state." [CONN. GEN. STAT. § 52-57\(a\) \(2011\)](#).
- **USUAL PLACE OF ABODE:** "It is clear that one's 'usual place of abode' is in the place where he would most likely have knowledge of service of process Its chief purpose is to ensure actual notice to the defendant that the action is pending The usual place of abode is generally considered to be the place where the person is living at the time of service It is not necessarily his domicile . . . and a person may have more than one usual place of abode In the final analysis, the determination of one's usual place of abode is a question of fact and the court may consider various circumstances." [Plonski v. Halloran](#), 36 Conn. Supp. 335, 335-336, 420 A.2d 117 (1980).
- **LONG ARM STATUTE (domestic relations):** [CONN. GEN. STAT. § 46b-46 \(2011\)](#).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

COURT RULES:

- CONN. GEN. STAT. (2011).
 - [§ 46b-45\(a\)](#). Service and filing of complaint.
 - [§ 46b-46](#). Notice to nonresident party
 - [§ 52-46](#). Time for service
 - [§ 52-48](#). Return day of process
 - [§ 52-50](#). Persons to whom process shall be directed
 - [§ 52-54](#). Service of summons
 - [§ 52-57\(a\)](#). Manner of service upon individuals
 - [§ 52-123](#). Circumstantial defects not to abate pleadings
- CONN. PRACTICE BOOK (2012)
 - Chapter 8. Commencement of action
 - [§ 8-1](#). Mesne Process
 - [§ 8-2](#). Waiver of Court Fees and Costs
 - Chapter 10. Pleadings
 - [§ 10-12](#). Service of Pleadings and Other Papers; Responsibility of Counsel or Pro Se Party; Documents and Persons to be Served

- [§ 10-13.](#) —Method of Service
- [§ 10-14.](#) —Proof of Service
- [§ 10-15](#) —Numerous Defendants
- [§ 10-16.](#) —Several parties represented by one attorney
- [§ 10-17.](#) —Service by Indifferent Person
- Chapter 11. Motions, requests, orders of notice, and short calendar
 - [§ 11-4.](#) Applications for Orders of Notice
 - [§ 11-5.](#) Subsequent Orders of Notice
 - [§ 11-6.](#) Notice by publication
 - [§ 11-7.](#) Attestation; Publication; Proof of compliance
 - [§ 11-8.](#) Orders of Notice directed outside of the United States of America
- Chapter 25. Procedure in Family Matters
 - [§ 25-5.](#) Automatic Orders upon Service of Complaint or Application
 - [§ 25.23.](#) Motions, Requests, Orders of Notice, and Short Calendar
 - [§ 25-28.](#) Order of Notice

COURT FORMS:

- Court Forms (Official)
 - [JD-FM-3](#) Summons Family Action
 - [JD-FM-158](#) Notice of automatic orders
 - [JD-FM-75](#) Application for waiver of fees/appointment of counsel
 - [JD-FM-167](#) Motion for order of notice in family cases
 - [JD-FM-168](#) Order of notice in family cases
 - [JD-FM-165A](#) Case management dates- Danbury, Hartford, Litchfield, Middletown, New Britain, New London, Norwich, Putnam
 - [JD-FM-165B](#) Case management dates- Bridgeport, Milford, New Haven, Stamford
 - [JD-FM-165C](#) Case management dates- Meriden, Rockville, Waterbury
 - [JD-FM-163](#) Case management agreement
 - [JD-FM-149](#) Parent education program—order, certificate and results
 - VS-63 Health Department form
 - [JD-FM-164](#) Affidavit concerning children
 - [JD-FM-164A](#) Addendum to affidavit concerning children
 - [JD-FM-6](#) Financial affidavit; [JD-FM-6H](#) Help text for financial affidavit
 - [JD-CL-12](#) Appearance; [JD-CL-12H](#) Help text for appearance form (with Spanish translation)
 - [JD-CL-12s](#) Apersonamiento
- [LIBRARY OF CONNECTICUT FAMILY LAW FORMS](#), Thomas D. Colin, Editor. (2008).
 - 1-001 Appearance (court form)
 - 1-002 Summons (court form)
 - 1-003 Summons
 - 1-004 Divorce Complaint (court form)
 - 1-005 Complaint with Notice of Automatic Orders

CASES:

- [Boyles v. Preston](#), 68 Conn. App. 596, 603-604,792 A.2d 878 (2002). "General Statutes § 52-123 provides that
Dissolution of Marriages in Connecticut-50

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

'[n]o writ, pleading, judgment or any kind of proceeding in court or course of justice shall be abated, suspended, set aside or reversed for any kind of circumstantial errors, mistakes or defects, if the person and the cause may be rightly understood and intended by the court." Section 52-123 is used to provide relief from defects found in the text of the writ itself. *Rogozinski v. American Food Service Equipment Corp.*, 211 Conn. 431, 434-35, 559 A.2d 1110 (1989). "It is not the policy of our courts to interpret rules and statutes in so strict a manner as to deny a litigant the pursuit of its complaint for mere circumstantial defects. . . . Indeed, § 52-123 of the General Statutes protects against just such consequences, by providing that no proceeding shall be abated for circumstantial errors so long as there is sufficient notice to the parties." (Citations omitted.) *Hartford National Bank & Trust Co. v. Tucker*, 178 Conn. 472, 477-78, 423 A.2d 141 (1979), cert. denied, 445 U.S. 904, 100 S.Ct. 1079, 63 L.Ed.2d 319 (1980). It is our expressed policy preference "to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his day in court. . . . The design of the rules of practice is both to facilitate business and to advance justice; they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice. . . . Our practice does not favor the termination of proceedings without a determination of the merits of the controversy where that can be brought about with due regard to necessary rules of procedure." (Citations omitted; internal quotation marks omitted.) *Coppola v. Coppola*, 243 Conn. 657, 665, 707 A.2d 281 (1998)."

- [Coppola v. Coppola](#), 243 Conn. 657, 666-667, 707 A.2d 281 (1998). "Allowing an amendment of the return date under the circumstances of the present case does not render § 52-46a meaningless. A return date may be amended but it still must comply with the time limitations set forth in § 52-48 (b). Section 52-48 (b) requires that "[a]ll process shall be made returnable not later than two months after the date of the process" Section 52-48 (b), therefore, with its two month limit, circumscribes the extent to which a return date may be amended."
- [Ceci Bros. Inc. v. Five Twenty One Corp.](#), No. CV96 0150073 S (Conn. Super. Ct., J.D. Stamford, May 21, 1996), 16 CONN. L. RPTR. 595, 1996 WL 365273 (Conn. Super. 1996). "For valid abode service, the papers must be left at the abode 'in such a place and in such a manner that it is reasonably probable the defendant will receive the notice of the action against him.' *Pozzi v. Harney*, 24 Conn. Sup. 488, 491, 194 A.2d 714 (1963). Thus slipping papers halfway under the door was held to be sufficient. *Id.* However, the court in *Pozzi* stated, 'pinning, tying or otherwise attaching a complaint to an outside door, where the complaint is subject to a number of outside influences over which the party to be served has no control, is generally not sufficient to constitute service.' *Id.* Service in

a mailbox in the hallway outside the defendant's apartment was not sufficient. *Balkun v. DeAnzona*, 5 Conn. Cir. 580, 258 A.2d 482 (1969).

- [Cato v. Cato](#), 226 Conn. 1,9, 626 A.2d 734 (1993). "We conclude that in a case such as this, where service of process can be accomplished by the most reliable means - that is, in-hand service of process by a process server in accordance with 52-57a - an order of notice is not required pursuant to 46b-46."
- [Babouder v. Abdennur](#), 41 Conn. Sup. 258, 259, 262, 566 A2d 457(1989). "In Connecticut, as in other states, the court will not exercise jurisdiction in a civil case which is based upon service of process on a defendant who has been decoyed, enticed or induced to come within the court's jurisdiction by any false representation, deceitful contrivance or wrongful device for which the plaintiff is responsible This rule does not apply, however, when the defendant enters the state on his own, even if the plaintiff and his agents then engage in trickery to make service of process."
- [Gluck v. Gluck](#), 181 Conn. 225, 435 A.2d 35 (1980). "In particular, she [the defendant]claims that abode service is constitutionally deficient within the context of a dissolution proceeding. We disagree."
- [Smith v. Smith](#), 150 Conn. 15, 183 A.2d 848 (1962). "Abode service is only a step removed from manual service and serves the same dual function of conferring jurisdiction and giving notice."

WEST KEY NUMBERS:

- *Process # 1 et seq.*

DIGESTS:

- [CONNECTICUT FAMILY LAW CITATIONS](#): *Practice and Procedure; Service of Process*
- [WEST'S CONNECTICUT DIGEST](#): *Divorce. IV. Proceedings (C) Time for proceeding, (E) Process or notice.*

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008). § 173. Service and notice requirements
- 27A [C.J.S.](#) *Divorce* (2005). §§ 178-190. Process and notice
- 72 [C.J.S.](#) *Process* (2005).

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010). Chapter 18. Process
 - § 18.1. In general
 - § 18.2. Issuance of writ and complaint
 - § 18.3. Officers authorized to serve process
 - § 18.4. Time limits

- § 18.5. Manner of service
 - § 18.6. Abode service
 - § 18.7. Substitute service
 - § 18.8. Subsequent Orders of Notice
 - § 18.9. Forms and procedures for Orders of Notice
 - § 18.10. Service on parties who are incompetent or incarcerated; Service on third parties
 - § 18.11. Appearance of defendant
 - § 18.12. Defects in process
 - § 18.13. Constructive service; Attachment
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, [STEPHENSON'S CONNECTICUT CIVIL PROCEDURE](#) (3rd ed. 2002).
Chapter 20. Family law procedures
 - § 248. Service of process
 - a. Service on resident defendants
 - b. Service on nonresidents
 - c. Service on mentally incompetent defendants
 - d. Action by and against minors
 - e. Service requisite for alimony and support
 - f. Service on the State
 - g. Third parties
 - [STATE OF CONNECTICUT JUDICIAL BRANCH. DO IT YOURSELF DIVORCE GUIDE](#). (JD-FM-179 Rev. 5-05).
 - BARBARA KAHN STARK ET AL., [FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT: PLANNING, NEGOTIATING AND FILING YOUR DIVORCE](#) (2003).
Chapter 6. Getting divorced: procedures and paperwork
 - Notifying your spouse /Service of process, pp. 111-113
 - Serving the absent spouse by certified or registered mail, p. 114
 - Serving the absent spouse by publication, p. 118

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Section 2.3: Parties

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to proper or necessary parties to an action for dissolution of marriage in Connecticut and third party intervention

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
Chapter 815j Dissolution of Marriage, Legal Separation and Annulment
[§ 46b-43](#). Capacity of minor to prosecute or defend
[§ 46b-54](#). Counsel for minor children. Duties
[§ 46b-55](#). Attorney General as party. Paternity establishment
[§ 46b-57](#). Third party intervention re custody of minor children

COURT RULES:

- CONN. PRACTICE BOOK (2012).
[§ 9-1](#) Continuance for Absent or Nonresident Defendant
[§ 9-3](#) Joinder of Parties and Actions; Interested Persons as Plaintiffs
[§ 9-4](#) — Joinder of Plaintiffs in One Action
[§ 9-5](#) —Consolidation of Actions
[§9-10](#) —Orders to Ensure Adequate Representation
[§ 9-18](#) Addition or Substitution of Parties; Additional Parties Summoned in by Court
[§ 9-19](#) —Nonjoinder and Misjoinder of Parties
[§ 9-22](#)—Motion to Cite in New Parties
[§ 9-24](#) Change of Name by Minor Children
[§ 10-12](#) Service of the Pleadings and Other Papers; Responsibility of Counsel or Pro Se Party; Documents and Persons to Be Served
[§ 10-13](#) —Method of Service
[§ 10-14](#) —Proof of Service
[§ 10-15](#) —Numerous Defendants
[§ 10-16](#) —Several parties Represented by One Attorney
[§ 10-17](#) —Service by Indifferent Person

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Luster v. Luster](#), 128 Conn. App. 259, 270, 273-275, 17 A.3d 1068 (2011).
“In determining whether the conservators in this case have the authority to maintain a dissolution action on behalf of the defendant, we are mindful of the importance of the right of access to our courts, a right shared by all people, including those declared legally incompetent...General Statutes § 45a-650 (k) very clearly states: “[a] conserved person shall retain *all rights and authority* not expressly assigned to a conservator.” (Emphasis added.)
Additionally, although a conserved person retains all of his or her unassigned rights and authority; see General Statutes § 45a-650(k); there has been created a common law rule that a conserved person, like a minor, does not have the legal capacity to bring a civil action in his or her

own name, but must do so through a properly appointed representative, except in limited circumstances....Given...that an action for dissolution of marriage is a civil action, combined with the conserved person's retention of *all rights and authority* not specifically assigned, we conclude that a conservator may bring a civil action for dissolution of marriage on behalf of the conserved person."

- [Shockley v. Okeke](#), 48 Conn. Sup. 647 (2004). "On the basis of the express terms of §§ 52-11 and 46b-1 (6), we conclude that the trial court was without jurisdiction to change the name of a nonparty minor child incident to the dissolution of the parents' marriage.' *Id.*, [*Mayor v. Mayor*, 627,] 631-32. 'Having examined all the statutes bearing on changes of name, we conclude that the legislature did not choose to grant the court jurisdiction to effect changes in the names of nonparty minor children incident to dissolutions of parents' marriages. A parent who wishes to effect a change of name for a minor child in the Superior Court must invoke the court's jurisdiction by proceeding under § 52-11 and must comply with the procedures established by Practice Book § 105 [now 9-24].' *Id.*, 633. 856 A.2d 1054"
- [Manndorf v. Dax](#), 13 Conn. App. 282, 287, 535 A.2d 1324 (1988). "Although interested in the defendant's marriage to the husband, the plaintiff, as a nonparty to that marriage, had no right to maintain an action for its annulment."
- [Derderian v. Derderian](#), 3 Conn. App. 522, 526-527, 490 A.2d 1008 (1985). "Other jurisdictions have upheld judgments in dissolution of marriage actions which potentially disturb the interests of those not parties to a dissolution action by construing the judgments as determinative of the right, title and interest in the property of the husband and wife, assuming that the property is an asset of the marital estate."
- [Salvio v. Salvio](#), 186 Conn. 311, 441 A.2d 190 (1982). "Since [the children]Gerald and Deborah had acquired no legal interest in the funds on deposit, they were not necessary parties for the purpose of establishing the trial court's jurisdiction over those accounts."
- [Derderian v. Derderian](#), 3 Conn. App. 522, 490 A.2d 1008 cert. den. 196 Conn. 810, 495 A.2d 279. "In the present action, a precise, underlying debt of the brother to the defendant [his sister] had been determined in the second dissolution of marriage action. That debt was the award of the marital home to the defendant. Since there was an established debt at the time of the present partition action, the brother was not an indispensable party in the action."
- [Manter v. Manter](#), 185 Conn. 502, 504-505, 441 A.2d 146 (1981). "Seeking custody or visitation rights, Allan Coombs

moved on February 13, 1979, to intervene in the divorce action of *Manter v. Manter* under General Statutes 46b-57, which permits interested third parties to intervene in custody controversies before the Superior Court. At a preliminary hearing the trial court on April 2 granted Coombs standing for the expressly limited purpose of a visitation study by the family relations office. By supplemental order dated October 1, 1979, the court denied the motion to intervene on the dual grounds that no present dispute was then before the court and no facts were presented to qualify Coombs as an interested party under 46b-57. Coombs now appeals from that denial of his motion to intervene.”

- [Welfare Commissioner v. Anonymous](#), 33 Conn. Sup. 100, 102, 364 A.2d 250 (1976). “Indeed, there is no evidence in the Juvenile Court proceedings that does not tend to prove that the grandaunt provides a good home for the children and takes good care of them. Nevertheless, the commissioner claims that the Juvenile Court could properly find that the children are uncared for and homeless within the purview of General Statutes § 17-53. His claim is that the children are ‘uncared for’ because their mother is not taking care of them and is not providing a home for them and because their father has, either inferentially or explicitly, admitted that he cannot take care of them or make a home for them. The commissioner’s claim, in short, is that the phrase ‘uncared for’ in General Statutes § 17-53 should be construed as if it read ‘uncared for by each living biological parent.’”
- [Sands v. Sands](#), 188 Conn. 98, 105-106, 448 A.2d 822 (1982) cert. den. 459 U.S. 1148, 103 S. Ct. 792, 74 L.Ed.2d 997. “The trial court could not ignore the fact that the state had a definite and imminent interest in this matter. Under these circumstances, the trial court clearly acted within its discretion in awarding \$1 per year alimony in order to protect a valid state interest.”
- [Vanderlip v. Vanderlip](#), 1 Conn. App. 158, 159, 468 A.2d 1253 (1984). “In this case, we cannot believe that the defendant was harmed by the refusal of the court to permit a continuance. On the day following the order to proceed immediately to trial, the defendant appeared. The usual order of trial was revamped in her favor. She was present at all relevant times. Under these circumstances, we are not persuaded that the trial court abused its discretion.”

WEST KEY NUMBER:

- *Divorce* # 70. Parties
 - #71 _____ . Plaintiff
 - #72 _____ . Defendant
 - #73 _____ . Intervention
 - # 74 _____ . Defense on behalf of state or public

DIGESTS:

- [ALR DIGEST](#): Divorce
 - § 70-73. Parties.
 - § 74. Defense on behalf of state or public

- [CONNECTICUT FAMILY LAW CITATIONS](#)
Parties to actions
- [WEST'S CONNECTICUT DIGEST](#): *Divorce. IV. Proceedings, (D) Parties*

ALR INDEX:

- Divorce and Separation
 - Standing
 - Third persons

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 17. Parties
 - § 17.1. In general
 - § 17.2. Capacity to maintain action
 - § 17.3. Minors
 - § 17.4. Third parties
 - § 17.5. Death of a party

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§§ 197-215. Parties
- 27A [C.J.S.](#) *Divorce* (2005).
§§ 170-177. Parties

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Section 3: Pleadings

Order of Pleadings

Conn. Practice Book § 25-11 (2012).

The order of pleadings shall be:

- (1) the plaintiff's complaint;
- (2) the defendant's motion to dismiss the complaint;
- (3) the defendant's motion to strike the complaint or claims for relief;
- (4) the defendant's answer, cross complaint and claims for relief;
- (5) the plaintiff's motion to strike the defendant's answer, cross complaint, or claims for relief;
- (6) the plaintiff's answer.

Section 3.1: Complaint

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic sources relating to complaints for dissolution of marriage in Connecticut.

DEFINITIONS:

- "The paramount role of a court when considering domestic relations cases is one of a 'court of equity.' The **court's equity powers** are essential to its ability to fashion the appropriate relief in domestic relations cases." [LaBow v. LaBow](#), 13 Conn. App. 330, 351, 537 A.2d 157 (1988) [emphasis added].
- "The power to act equitably is the keystone to the court's ability to fashion relief in the infinite variety of circumstances which arise out of the dissolution of a marriage. Without this wide discretion and broad equitable power, the courts in some cases might be unable fairly to resolve the parties' dispute, i.e., Where the sole asset of the parties is their residence to which both have contributed. Equity certainly does not contemplate such a result . . . Equity jurisdiction once obtained will be retained for the purpose of administering complete relief." [Pasquariello v. Pasquariello](#), 168 Conn. 579, 585, 362 A.2d 835 (1975).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
 - [§ 46b-40](#). Grounds for dissolution of marriage; legal separation, amendment
 - [§ 46b-44](#). Residency requirement
 - [§ 46b-45](#). Service and filing of complaint
 - [§ 46b-45a](#). Allegation of pregnancy in pleadings. Disagreement as to paternity. Hearing.
 - [§ 46b-46](#). Notice to nonresident party; jurisdiction for alimony and support
 - [§ 46b-47](#). Complaint for dissolution of marriage on ground of confinement for mental illness; procedure
 - [§46b-48](#). Dissolution of marriage or annulment upon conviction of crime against chastity; procedure
 - [§ 52-45a](#). Commencement of civil actions. Contents and signature of process
 - [§ 52-54](#). Service of Summons
 - [§ 52-57](#). Manner of service upon individuals, municipalities, corporations, partnerships and voluntary associations.

FORMS:

- Official Form
 - [JD-FM-159](#). Divorce (Dissolution of Marriage) Complaint/Cross Complaint
- Complaint—Form, 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE](#)

[WITH FORMS](#) (2010) § 19.5.

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 8. Commencement of action
[§ 8-1](#). Mesne Process
Chapter 25 Procedure in family matters
[§ 25-2](#). Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment
[§ 25-7](#). Pleadings in General; Amendments to Complaint or Application
[§ 25-8](#) —Amendment; New Ground for Dissolution of Marriage or civil union
[§ 25-23](#). Motions, Requests, Orders of Notice and Short Calendar

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Vanderlip v. Vanderlip](#), 1 Conn. App. 158, 160, 468 A.2d 1253 (1984). "The unanswered complaint claimed only a dissolution of the marriage. The defendant filed no claims for relief. The case was, however, presented to and tried by the court on the contested issues of support, alimony and property division. See *Falker v. Samperi*, 190 Conn. 412, 427, 461 A.2d 681 (1983). Because of this procedure, we need not consider any of the questions raised in *Tsopanides v. Tsopanides*, 181 Conn. 248, 435 A.2d 34 (1980). Compare *LaCroix v. LaCroix*, 189 Conn. 685, 457 A.2d 1076 (1983)."
- [LaCroix v. LaCroix](#), 189 Conn. 685, 687-688, 457 A.2d 1076 (1983) "On appeal, the plaintiff's sole claim is that the trial court was without jurisdiction to award alimony or any part of the proceeds of the sale of real property to the defendant on the basis of the cross complaint. He asserts that General Statutes 46b-67 mandates a twenty-day waiting period after the filing of a cross complaint in a dissolution proceeding before any action may be taken on that cross complaint. He therefore claims that the alimony and property awards are void, because those issues were not raised in his complaint and could not be considered under the cross complaint without violating 46b-67. We agree that 46b-67 by its clear language forbids the consideration of a cross complaint until twenty days after it is filed and, therefore, the court could not make awards based on the defendant's cross complaint. We cannot agree, however, that the trial court lacked jurisdiction to make the challenged awards. We find no error."
- [Winick v. Winick](#), 153 Conn. 294, 299, 216 A.2d 185 (1965). "The plaintiff was entitled to notice of, and an opportunity to be heard on, any application by the defendant for modification of the judgment. Accordingly, it was error for the court to modify the judgment on an oral motion and without notice to the plaintiff either specially or, in the usual practice, by the filing with the clerk of a motion as provided by 381 [now 17-46] of the Practice Book with service on counsel for the plaintiff as provided by 80 (2) [now 90-1]."

WEST KEY NUMBERS:

- *Marriage* # 57
- *Marriage* # 58(1-8)
- *Divorce* # 88-95. Pleading
- *Husband and Wife* # 285 et seq.

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§§216-237. Petition or Complaint
- 27A [C.J.S.](#) *Divorce* (2005).
§§ 153-164. Domicile or Residence of Parties
§§ 217-244. Pleading

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 19. Pleadings
§ 19.1. Pleadings in general
§ 19.2. Form of pleadings
§ 19.3. Complaint—Generally
§ 19.4. □ Prayer for relief
§ 19.5. □ Form
§ 19.6. □ Official form
§ 19.7. Complaint in action for custody or visitation
§ 19.8. Form—Complaint in action for custody or visitation
§ 19.12. Joinder of multiple claims or causes of action
§ 19.13. Amendment of pleadings
§ 19.14. Service and filing of pleadings and other papers
- [DUPONT ON CONNECTICUT CIVIL PRACTICE](#) (2012).
Chapter 25. Procedure in family matters, general provisions
§ 25-2.1. Form of complaint; Required allegations
§ 25-2.2. Pendente lite: Temporary orders; Standing orders
§ 25-2.3. Judgment dissolving marriage
§ 25-2.4. Complaints for change of name
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, [STEPHENSON'S CONNECTICUT CIVIL PROCEDURE](#) (3rd ed. 2002).
Chapter 20. Family law procedures
§ 250. Pleadings in dissolution actions
b. The complaint

LAW REVIEWS:

- Cynthia C. George and Barbara M. Schelenger, *Family Law Jurisdiction*, 64 [CONNECTICUT BAR JOURNAL](#) 455 (1990).
- Prof. Max Rubenstein, *Domicile or Jurisdictional Basis of Divorce Decrees*, 23 [CONNECTICUT BAR JOURNAL](#) 280(1949).
- Francis X. Hennessy, *Jurisdiction - Notice in Matrimonial Matters*, 58 [CONNECTICUT BAR JOURNAL](#) 213 (1984)

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Section 3.2: Motion to Dismiss

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic references relating to the motion to dismiss in a dissolution of marriage proceeding in Connecticut

DEFINITIONS:

- "When a motion to dismiss is filed questioning subject matter jurisdiction it must be disposed of before there can be other proceedings." Babouder v. Abdennur, 41 Conn. Sup. 258, 259, 566 A2d 457 (1989).
- "Jurisdiction must exist in three particulars: the subject matter of the case, the parties, and the process." *Ibid.*, p.259
- **Pendency of a prior action between the same parties**
"is a ground for dismissal for the second action, for reasons of justice and equity and for the further reason that it is duplicative and therefore vexatious This rule does not apply, however, where the purposes of the two actions and the issues to be determined in them are different." *Ibid.*, p.263

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. Procedures in Family Matters
[§ 25-12](#). Motion to dismiss
[§ 25-13](#). Grounds on Motion to Dismiss
(a) The motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process and (5) insufficiency of service of process. This motion shall always be filed with a supporting memorandum of law and, where appropriate, with supporting affidavits as to facts not apparent on the record.
(b) If an adverse party objects to this motion he or she shall, at least five days before the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 through 10-17 a memorandum of law and, where appropriate, supporting affidavits as to facts not apparent on the record.
[§ 25-14](#) —Waiver and Subject Matter Jurisdiction
[§ 25-15](#) —Further Pleading by Defendant

FORMS:

- [LIBRARY OF CONNECTICUT FAMILY LAW FORMS](#), Thomas D. Colin, Editor. (2008).
1-022 Motion to Dismiss
- [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) (1991).
Form III-A1. Motion to dismiss (court lacks jurisdiction over person and service of process was insufficient), p. 22
Form III-A-2. Motion to dismiss (another action pending),p.23
Form III-A-3. Motion to dismiss or stay (inconvenient Dissolution of Marriages in Connecticut-62

forum), p.24
Form III_A-4. Objection to defendant's motion to dismiss or stay dated ____ 19 __ (inconvenient forum)

- 2 [CONN. PRACTICE BOOK](#) (1997).
Form 106.1. Motion to dismiss

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Narayan v. Narayan](#), 305 Conn. 394, 402-403, (2012).
"[T]he Superior Court...may exercise jurisdiction over a person only if that person has been properly served with process, has consented to the jurisdiction of the court or has waived any objection to the court's exercise of personal jurisdiction." (Internal quotation marks omitted.) *Kim v. Magnotta*, 249 Conn. 94, 101-102, 733 A.2d 809 (1999). "... "[T]he filing of an appearance on behalf of a party, in and of itself, does not waive that party's personal jurisdiction claims. Nevertheless, '[a]ny defendant, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of the appearance....' Practice Book § 10-30. The rule specifically and unambiguously provides that any claim of lack of jurisdiction over the person as a result of an insufficiency of service of process is waived unless it is raised by a motion to dismiss filed within thirty days in the sequence required by Practice Book § 10-6, formerly [Practice Book (1978-97)] § 112. Thus, thirty-one days after the filing of an appearance or the failure to adhere to the requisite sequence, a party is deemed to have submitted to the jurisdiction of the court. Any claim of insufficiency of process is waived if not sooner raised." *Pitchell v. Hartford*, 247 Conn. 422, 432-33, 722 A2d 797 (1999).
- [Spilke v. Spilke](#), No. FA 00 0440636 S, 2002 WL 521313 (Conn Super 2002). "The defendant has moved to dismiss this action for dissolution of marriage on the grounds that he had previously obtained an annulment of the marriage in an Israeli judgment which, he asserts, is entitled to recognition under the doctrine of comity."
- [Panganiban v. Panganiban](#), 54 Conn. App. 634, 638, 736 A.2d 190 (1999). "We conclude that the trial court properly denied the motion to dismiss because the defendant did have sufficient contact with Connecticut and the exercise of jurisdiction in this case does not offend the traditional notions of fair play and substantial justice."
- [Babouder v. Abdennur](#), 41 Conn. Sup. 258, 259, 566 A2d 457 (1989). "The defendant has filed a motion to dismiss the complaint on five grounds: (1) personal service upon the defendant was accomplished by trick, fraud or artifice; (2) the plaintiff is not a resident of Connecticut now or when this action was commenced, and therefore has no standing to bring or to maintain this action under General Statutes § 46b-44; (3) there is pending in the Family Court, Patriarchy of Catholics, in Beirut, Lebanon, a prior Dissolution of Marriages in Connecticut-63

claim commenced by the plaintiff claiming similar relief; (4) the plaintiff failed to file a custody statement as required by General Statutes § 46b-99; (5) the plaintiff allegedly violated the clean hands doctrine by her unauthorized removal of the parties' minor children from Lebanon in violation of a court order, by the method she used to serve the complaint on the defendant, and by her misrepresentation as to her residence." *The motion to dismiss was denied. See Table 7, below.*

- [Rummel v. Rummel](#), 33 Conn. App. 214, 219, 635 A2d 295 (1993). "The parties herein agree that by going forward on this trial without an answer having been filed, the defendant waived any defect regarding jurisdiction over the person that may have existed."

WEST KEY NUMBERS:

- *Divorce* #139.5. Dismissal, involuntary
#57-65. Jurisdiction, venue and limitation

DIGESTS:

- [WEST'S CONNECTICUT DIGEST](#): *Divorce, IV. Proceedings (K) Dismissal*

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§ 250. Motion to dismiss
- 27A [C.J.S.](#) *Divorce* (2005).
§§ 309-319. Dismissal or Discontinuance

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
§ 18.12. Defects in process
§ 19.8. Other responsive pleadings
- [DUPONT ON CONNECTICUT CIVIL PRACTICE](#) (2012).
§ 10-30.1. Function of motion to dismiss
§ 10-30.2. Special appearance not required
§ 10-30.3. Thirty day requirement
§ 10-31.1. Scope of motion to dismiss
§ 10-31.3. Circumstantial defects not to abate pleadings
§ 10-32.1. Subject matter jurisdiction cannot be waived
§ 10-33.1. Lack of standing (subject matter jurisdiction)
§ 10-34.1. Interlocutory appeal from denial of motion to dismiss not allowed
§ 10-34.2. Further pleading not allowed
§ 25-57.5. Visitation rights; persons other than parents
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, [STEPHENSON'S CONNECTICUT CIVIL PROCEDURE](#) (3rd ed. 2002).
Chapter 20. Family law procedures
§ 250. Pleadings in dissolution actions
c. Pleading by defendant
- JEANINE M. DUMONT, [PLEADINGS AND PRETRIAL PRACTICE](#) (1998).
Chapter VII. Motion to Dismiss
Dissolution of Marriages in Connecticut-64

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Table 4: Badouder v. Abdennur

Badouder v. Abdennur 41 Conn. Sup. 258, 566 A2d 457 (1989)	
(1) personal service upon the defendant was accomplished by trick, fraud or artifice.	"In Connecticut, as in other states, the court will not exercise jurisdiction in a civil case which is based upon service of process on a defendant who has been decoyed, enticed or induced to come within the court's jurisdiction by any false representation, deceitful contrivance or wrongful device for which the plaintiff is responsible This rule does not, however, when the defendant enters the state on his own, even if the plaintiff and his agents then engage in trickery to make service of process." <u>Ibid.</u> , p. 262.
(2) the plaintiff is not a resident of Connecticut now or when this action was commenced, and therefore has no standing to bring or to maintain this action under General Statutes § 46b-44	"The plaintiff in the present case sufficiently meets the residency requirement in § 46b-44 (a). This court, therefore, has subject matter jurisdiction." <u>Ibid.</u> , p. 267
(3) there is pending in the Family Court, Patriarchy of Catholics, in Beirut, Lebanon, a prior claim commenced by the plaintiff claiming similar relief;	"The rule that the pendency of a prior action between the same parties and to the same ends is grounds for dismissal has efficacy only where the actions are pending in the same jurisdiction. The pendency of an action in one state is not a ground for abatement of a later action in another state." <u>Sauter v. Sauter</u> , 4 Conn. App. 581, 584, 495 A2d 1116 (1985).
(4) the plaintiff failed to file a custody statement as required by General Statutes § 46b-99.	". . . failure to file such a statement is not a jurisdictional defect and there is jurisdiction, at least, for the purposes of a dissolution of the marriage." <u>Ibid.</u> , p. 261
(5) the plaintiff allegedly violated the clean hands doctrine by her unauthorized removal of the parties' minor children from Lebanon in violation of a court order, by the method she used to serve the complaint on the defendant, and by her misrepresentation as to her residence.	"The clean hands doctrine cannot be raised on a motion to dismiss." <u>Ibid.</u> , p. 261

Section 3.3: Motion to Strike

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic references relating to the motion to strike in a dissolution of marriage or legal separation proceeding in Connecticut

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. Procedures in Family Matters
[§ 25-16.](#) Motion to Strike
 - (a) Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint or cross complaint, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any claim for relief in any such complaint or cross complaint, or (3) the legal sufficiency of any such complaint or cross complaint, or any count thereof, because of the absence of any necessary party, or (4) the joining of two or more causes of action which cannot properly be united in one complaint or cross complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint or cross complaint, or any part of that answer contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.
 - (b) A motion to strike on the ground of the nonjoinder of a necessary party must give the name and residence of the missing party or such information as the moving party has as to his or her identity and residence and must state his or her interest in the cause of action.
 - [§ 25-17.](#) —Date of Hearing
 - [§ 25-18.](#) —Reasons
 - [§ 25-19.](#) —Memorandum of Law
 - [§ 25-20.](#) —When Memorandum of Decision Required
 - [§ 25-21.](#) —Substitute Pleading Part of Another Cause or Defense

FORMS:

- 2 [CONN. PRACTICE BOOK](#) (1997).
Form 106.2. Motion to strike

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [LaBow v. LaBow](#), 69 Conn. App. 760, 764, 796 A.2d 592 (2002). "Ronald LaBow [defendant] filed a motion to strike the petition for failure to state a claim for which relief can be granted, pursuant to Practice Book § 10-39. In ruling on the motion to strike, the court, Moran, J., sua sponte considered whether the court had subject matter jurisdiction over the petition for a new trial. Relying on *Summerville v. Warden*, 229 Conn. 397, 426, 641 A.2d 1356 (1994), the court concluded that the statute of limitations, General Statutes § 52-582, barred the petition for a new trial and that the court therefore lacked subject matter jurisdiction. The court dismissed the petition, and Myrna LaBow appealed.
- [Gibson v. Gibson](#), 34 Conn. App. 139, 140, 640 A.2d 145

(1994). "The plaintiff in this dissolution of marriage action has filed a motion to strike the issue of postjudgment counsel fees from the defendant's brief. The dispositive issue is whether this court's January 27, 1994 dismissal of the defendant's amended appeal, which raised the issue of counsel fees, precludes the defendant from addressing this same issue in his brief on the main appeal."

WEST KEY NUMBERS:

- *Divorce* # 88-108. Pleading

TEXTS & TREATISES:

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
§ 19.8. Other responsive pleadings
- [DUPONT ON CONNECTICUT CIVIL PRACTICE](#) (2012).
§ 10-39.1. Function of Motion to Strike
§ 10-39.2. Well-pleaded allegations admitted
§ 10-45-1. Judgment on the pleadings; motion for
§ 25-16.1. Misjoinder of parties in family matters
§ 25-22.1. Misjoinder of causes of action in family matters
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, [STEPHENSON'S CONNECTICUT CIVIL PROCEDURE](#) (3rd ed. 2002).
Chapter 20. Family law procedures
§ 250. Pleadings in dissolution actions
c. Pleading by defendant
- JEANINE M. DUMONT, [PLEADINGS AND PRETRIAL PRACTICE](#) (1998).
Chapter X. Motion to Strike

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Section 3.4: Answer/Cross Complaint

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic sources relating to answers and/or cross complaints in dissolution of marriage proceedings in Connecticut

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011). [§ 46b-41](#). Complaint includes cross-complaints or cross actions. Whenever the word “complaint” is used in this chapter or section [46b-1](#) or [51-348a](#), it shall include cross-complaints or cross actions where appropriate.

COURT RULES:

- CONN. PRACTICE BOOK (2012). [§ 25-9](#). —Answer, Cross Complaint, Claims for Relief by Defendant
[§ 25-10](#). —Answer to Cross Complaint

FORMS:

- Official Forms
 - [JD-FM-159](#). Divorce (Dissolution of Marriage) Complaint/Cross Complaint
 - [JD-FM-160](#). Divorce (Dissolution of Marriage) Answer
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010) § 19.10.
Answer and Cross Complaint—Form
- [LIBRARY OF CONNECTICUT FAMILY LAW FORMS](#), Thomas D. Colin, Editor. (2008).
1-010 Answer and Cross-Complaint
1-011 Dissolution Answer (court form)

CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- [Viveros v. Viveros](#), No. FA 03 0193290 (Conn. Super. Ct., J.D. Stamford, Apr. 8, 2004). “On December 19, 2003 the plaintiff filed a request for leave to amend complaint. No objection was filed and the amended complaint is deemed filed by consent of the defendant. The amended complaint alleges adultery as the sole ground for dissolution. It is one of the many causes recited in § 46b-40(c), Conn. Gen. Statutes upon a finding that it occurred. In this case the plaintiff has not proven her allegation of adultery occurring prior to the irretrievable breakdown, *Venuti v. Venuti*, 185 Conn. 156, 158, 440 A.2d 878 (1991). The defendant filed a cross complaint alleging that the marriage has broken down irretrievably. The plaintiff filed an answer admitting the allegation. The Court concludes that the marriage had broken down irretrievably by December 2002.”

- [Rummel v. Rummel](#), 33 Conn.App. 214, 218-219, 635 A2d 295 (1993) “The parties herein agree that by going forward on this trial without an answer having been filed, the defendant waived any defect regarding jurisdiction over the person that may have existed.”
- [LaCroix v. LaCroix](#), 189 Conn. 685, 687-688, 457 A.2d 1076 (1983) “On appeal, the plaintiff’s sole claim is that the trial court was without jurisdiction to award alimony or any part of the proceeds of the sale of real property to the defendant on the basis of the cross complaint. He asserts that General Statutes 46b-67 mandates a twenty-day waiting period after the filing of a cross complaint in a dissolution proceeding before any action may be taken on that cross complaint. He therefore claims that the alimony and property awards are void, because those issues were not raised in his complaint and could not be considered under the cross complaint without violating 46b-67. We agree that 46b-67 by its clear language forbids the consideration of a cross complaint until twenty days after it is filed and, therefore, the court could not make awards based on the defendant’s cross complaint. We cannot agree, however, that the trial court lacked jurisdiction to make the challenged awards. We find no error.”

ENCYCLOPEDIAS:

- 24 [AM. JUR. 2D](#) *Divorce and Separation* (2008).
§§ 238-245. Response or Answer
§§ 246-249. Cross-Petition, Cross-Complaint, Cross-Bill, or Counterclaim
- 27A [C.J.S.](#) *Divorce* (2006).
§§ 230-233. Answer
§§ 234-235. Cross action or counterclaim

TEXTS & TREATISES:

- [HANDBOOK OF FORMS FOR CONNECTICUT FAMILY LAWYER](#) (1991).
Why it is a good practice to file a cross-complaint.
Answer or Answer and Cross-Complaint: Notes & Comments, p. 9.
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
Chapter 19. Pleadings
§ 19.9. Answer, cross-complaint, and claims for relief by defendant
§ 19.10. Answer and Cross Complaint—Form
- 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, [STEPHENSON’S CONNECTICUT CIVIL PROCEDURE](#) (3rd ed. 2002).
Chapter 20. Family law procedures
§ 247. Domicile and residence in cross-complaints
§ 250. Pleadings in dissolution actions
c. Pleading by defendant
- [DUPONT ON CONNECTICUT CIVIL PRACTICE](#) (2012).
Chapter 25. Procedure in family matters, general provisions
§ 25-9.1. Order of pleadings in family matters;
Dissolution of Marriages in Connecticut-70

Discovery in general
§ 25-9.2. Pleading claims for relief

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*Originally compiled by Lawrence Cheeseman, retired Judicial
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Section 3.5: Amendment to Complaint

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic sources relating to amendment of a complaint or cross-complaint

DEFINITIONS:

- **Allowance of amendment:** "Much depends upon the particular circumstances of each case. The factors to be considered include unreasonable delay, fairness to the opposing parties, and negligence of the party offering the amendment." *Antonofsky v. Goldberg*, 144 Conn. 594, 597, 136 A.2d 338 (1957).

STATUTES:

Note: You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- CONN. GEN. STAT. (2011).
[§ 46b-67](#). Waiting period. Effect of decree

COURT RULES:

- CONN. PRACTICE BOOK (2012).
Chapter 25. Procedures in Family Matters
[§ 25-2](#). Complaints for dissolution of marriage or Civil Union, Legal Separation, or Annulment
[§ 25-3](#). Action for Custody of Minor Child
[§ 25-4](#). Action for Visitation of Minor child
[§ 25-7](#). **Pleadings in General; Amendments to Complaint or Application**
[§ 25-8](#). **—Amendment; New Ground for Dissolution of Marriage or Civil Union**
Chapter 10
[§ 10-59](#). Amendments; Amendment as of Right by Plaintiff
[§ 10-60](#). —Amendment by Consent, Order of Judicial Authority, or Failure to Object
[§ 10-61](#). —Pleading after Amendment

FORMS:

- [LIBRARY OF CONNECTICUT FAMILY LAW FORMS](#), Thomas D. Colin, Editor. (2008).
1-007 Request to Amend Complaint
1-008 Motion for Permission to Amend Complaint and to Cite Additional parties
1-009 Amended Summons and Complaint
- [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) (1991).
Form II-A-3 "Motion to amend complaint," p. 7
Form II-A-4 "Amendment to complaint," p.8

CASES:

- *Viveros v. Viveros*, No. FA 03 0193290 (Conn. Super. Ct., J.D. Stamford, Apr. 8, 2004). "On December 19, 2003 the plaintiff filed a request for leave to amend complaint. No objection was

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

filed and the amended complaint is deemed filed by consent of the defendant. The amended complaint alleges adultery as the sole ground for dissolution. It is one of the many causes recited in § 46b-40(c), Conn. Gen. Statutes upon a finding that it occurred. In this case the plaintiff has not proven her allegation of adultery occurring prior to the irretrievable breakdown, *Venuti v. Venuti*, 185 Conn. 156, 158, 440 A.2d 878 (1991). The defendant filed a cross complaint alleging that the marriage has broken down irretrievably. The plaintiff filed an answer admitting the allegation. The Court concludes that the marriage had broken down irretrievably by December 2002."

- [Welch v. Welch](#), No. FA 00-0072505, 2002 Ct. Sup. 6446, 6450-6451 (May 17, 2002). "Here the defendant did not seek leave to amend her cross-complaint until after the trial. The plaintiff objects to the allowance of the amendment because it raises a new cause of action not previously alleged. In exercising its discretion in determining whether the court should allow the amendment, the court is guided by the considerations referred to in *Antonofsky* . . . Lastly, it is not fair to the plaintiff to allow the amendment where he has not been put on notice of it and where its necessity, if any, is caused by the defendant's own failure to prove the grounds alleged in her cross-complaint. The request for leave to amend the cross-complaint is denied."
- [Cugini v. Cugini](#), 13 Conn. App. 632, 636, 538 A.2d 1060 (1988). "The defendant also claims an abuse of discretion by the trial court in permitting an amendment to the complaint to allege as an additional ground for dissolution that he had been convicted of an infamous crime. This is one of the grounds upon which dissolution may be sought; General Statutes 46b-40(c)(9); and, in any event, it was not the ground upon which dissolution was granted in this case."
- [Rodearmel v. Rodearmel](#), 173 Conn. 273, 274, 377 A.2d 260 (1977). "On the appeal, the defendant briefed six claims of error. Four of these are addressed to discretionary rulings of the court in granting the plaintiff permission to amend his complaint to add a new claim for relief, in assigning the defendant's interest in the marital residence to the plaintiff, in not awarding a greater amount of alimony and in not awarding to the defendant additional counsel fees. We find no error in any of these rulings as to each of which the trial court has broad discretion."
- [LaBow v. LaBow](#), 171 Conn. 433, 441-442, 370 A2d 990 (1976). "The court below was correct in permitting the plaintiff to amend her complaint, adding alternative bases for the subject-matter jurisdiction of the court. Section 132 of the Practice Book allows a party to amend with leave of the court, which was here given. The court had jurisdiction of the action based on the plaintiff's residence in this state, even though the initial complaint alleged domicil."
- [Baker v. Baker](#), 166 Conn. 476, 486, 352 A2d 277 (1974). "It

is well settled that amendments, unless they allege a new cause of action, relate back to the date of the complaint While the plaintiff argues, with some justification, that the defendant should be estopped from asserting this claim in that it was at his request or insistence that the prayer for relief was amended so as to ask for a divorce rather than a legal separation, in light of the view we take of this claim it is unnecessary to decide that issue. The amendment, altering as it did only the prayer for relief, clearly did not change the factual bases or series of transactions upon which the complaint was based.”

- [Kilpatrick v. Kilpatrick](#), 144 Conn. 738, 739, 131 A2d 645 (1974). “The only other claim advanced by the defendant upon which we wish to comment is that at the time of trial the court permitted the plaintiff to amend her prayers for relief by adding a request for alimony. The record fails to show that the defendant raised at trial any claim of law in this regard. But if it is assumed that he did so, the amendment was within the discretion of the court and we find nothing to indicate that its discretion was abused.”
- [Kelsall v. Kelsall](#), 139 Conn. 163, 165, 90 A.2d.878 (1952). “An amendment to a complaint relates back to the institution of the action for some purposes; . . . but when it sets up a new and different cause of action it speaks as of the date when it is filed To be valid, it must state a cause of action which exists at that time. A cause of action must arise from a single group of facts Acts amounting to intolerable cruelty and acts amounting to desertion do not constitute a single group of facts. They are separate and distinct. An amendment to a complaint for divorce on the ground of intolerable cruelty which sets up desertion in a new count is the statement of a new cause of action.”

WEST KEY NUMBERS

Divorce # 104 – Amended and Supplemental Pleadings

- 27A [C.J.S. Divorce](#) (2005).
§ 239-241. Amended and supplemental pleadings
- 24 [AM. JUR. 2D Divorce and Separation](#) (2008).
§ 234-237. Amendment, Supplemental Pleadings

DIGESTS:

- [WEST’S CONNECTICUT DIGEST](#): *Divorce, IV. Proceedings, (I), Pleading, 104. Amended and supplemental pleadings*

TEXTS & TREATISES

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
§ 19.13. Amendment of Pleadings
- [DUPONT ON CONNECTICUT CIVIL PRACTICE](#) (2012).
Chapter 25. Procedure in family matters, general provisions
§ 28-8.1. Amendments; Family matter complaint
- JEANINE M. DUMONT, [PLEADINGS AND PRETRIAL PRACTICE](#) (1998).
Dissolution of Marriages in Connecticut-74

Chapter VII. Amendments to Pleadings

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Table 5: Default in family Matters

Default in Family Matters	
Failure to file an Appearance	<p>“Any case claiming a dissolution of marriage, legal separation, or annulment in which the defendant has failed to file an appearance may be assigned a date certain for disposition as an uncontested matter pursuant to Section 25-50. If the defendant has not filed an appearance by the date assigned for disposition, the case may proceed to judgment without further notice to such defendant. Section 17-20 concerning motions for default shall not apply to such cases.” CONN. PRACTICE BOOK § 25-51(a) (2012) [emphasis added].</p>
	<p>“If the defendant files an appearance by the date assigned for disposition, the presiding judge or a designee shall determine which track the case shall take pursuant to Section 25-50.” CONN. PRACTICE BOOK § 25-51(b) (2012) [emphasis added].</p>
Failure to appear for scheduled disposition	<p>“If a party fails to appear in person or by counsel for a scheduled disposition, the opposing party may introduce evidence and the case may proceed to judgment without further notice to such party who failed to appear. CONN. PRACTICE BOOK § 25-52 (2012) [emphasis added].”</p>
See also:	<ul style="list-style-type: none"> • 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (2010). Chapter 24. Trial; Procedural aspects § 24.12. Default • 2 RENEE BEVACQUA BOLLIER AND SUSAN V. BUSBY, STEPHENSON’S CONNECTICUT CIVIL PROCEDURE (3rd ed. 2002). Chapter 20. Family law procedures § 258. Limited contested and contested trials d. Proceeding without the defendant